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## The Creation of Evil: The Role of the Law in Shaping Beliefs on DrugHarm and Addiction

Joaquín Velez Navarro

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**The Creation of Evil: The Role of the Law in Shaping Beliefs on Drug  
Harm and Addiction**

JOAQUÍN VÉLEZ NAVARRO\*

ABSTRACT

The war on drugs has played a significant role in shaping people's perceptions about psychoactive substances. While illicit drugs have been demonized and presented as extremely harmful and addictive, legal drugs are tolerated and even considered to be beneficial in many societies. In this paper, I challenge this division. I argue that there is no evidence to support the claim that the substances that the law criminalizes and presents as evil are more addictive and harmful than the ones that are tolerated and legal. The misconceptions shaped by the law have produced terrible consequences and have deprived people of different benefits that could be gained from using certain criminalized substances. Current legal drug reforms, however, do not tackle this problem but continue with the irrational stigmatization of illegal drugs and their users.

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“[L]aw becomes not merely a system of rules to be observed, but a world in which we live. . . . [This world] is as much ‘our world’ as is the physical universe of mass, energy, and momentum.”

Robert Cover<sup>1</sup>

## INTRODUCTION

Colombia is the largest cultivator of coca in the world and also an important producer of opium;<sup>2</sup> Afghanistan is the largest producer of opium in the world and a major cannabis exporter;<sup>3</sup> Morocco is the world’s leading producer and exporter of cannabis;<sup>4</sup> and Mexico is the third largest opium producer and also a key transit country for illicit drugs.<sup>5</sup>

All of the aforementioned countries have been stigmatized for producing and trafficking illicit drugs.<sup>6</sup> This situation has damaged their image and that of their citizens.<sup>7</sup> As a Colombian, for instance, I have been asked on several occasions by people of other nationalities (usually as a joke), if I have a line of cocaine or if my parents work in the drug trafficking business. These types of jokes are not only made by people to Colombians they encounter directly, but are also publicized by big corporations.<sup>8</sup> For instance, Walmart was recently selling a sweater that featured Santa Claus seated in front of a table that had several lines of a white substance.<sup>9</sup> The description of the sweater stated as follows: “[w]e all know how snow works. It’s white, powdery and the best snow comes straight from South America” implying that is why “Santa really likes to savour the moment when he gets his hands on some quality, grade A, Colombian snow.”<sup>10</sup> The description implied that the substance in the sweater was cocaine from Colombia.<sup>11</sup>

The indignation this advertisement spurred was massive.<sup>12</sup> Many Colombians felt insulted, and the government was so offended that it decided

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1. Robert M. Cover, *Nomos and Narrative*, 97 HARV. L. REV. 4, 5 (1983).

2. U. N. OFF. ON DRUGS & CRIME, WORLD DRUG REPORT 2019: GLOBAL OVERVIEW OF DRUG DEMAND AND SUPPLY, 43, 45, 47,70 (2019), [https://wdr.unodc.org/wdr2019/prelaunch/WDR19\\_Booklet\\_2\\_DRUG\\_DEMAND.pdf](https://wdr.unodc.org/wdr2019/prelaunch/WDR19_Booklet_2_DRUG_DEMAND.pdf) [hereinafter WORLD DRUG REPORT 2019].

3. *Id.* at 43-44, 69.

4. *Id.* at 72.

5. *Id.* at 43.

6. *See id.* at 43, 44, 46.

7. *See* WORLD DRUG REPORT 2019, *supra* note 2, at 28.

8. *See generally* *Colombia Demandará a Walmart por Promoción de Buze que Vincula al País con Cocaína*, EL ESPECTADOR (Dec. 10, 2019, 7:53 PM), <https://www.elespectador.com/noticias/judicial/colombia-demandara-walmart-por-promocion-de-buso-que-vincula-al-pais-con-cocaina-articulo-895241> [hereinafter *Colombia Demandará*].

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

to sue Walmart for deteriorating the image of the country.<sup>13</sup> These reactions showed two obvious things about Colombian citizens. First, most Colombians are not proud of their country being a major producer of cocaine in the world.<sup>14</sup> Second, it showed that some become extremely offended when someone mentions that subject (the production and trafficking of drugs, and specifically, cocaine).<sup>15</sup> Like Colombians, Mexicans are severely offended when they are linked with drug trafficking.<sup>16</sup> In several instances, former President Donald Trump characterized Mexican immigrants as “bad hombres” who traffic drugs.<sup>17</sup> These comments have not been well received by Mexican citizens, who have been upset when such comments were made.<sup>18</sup> Another example further demonstrates this indignation: when discussing how to title a reportage for the BBC, two Mexican citizens said that naming it “Narco Mexico” would not be a good idea as it would offend many Mexican readers and generate rejection because Mexicans do not like to be linked to the traffic of illicit drugs.<sup>19</sup>

Despite their offense at being linked to the production and trafficking of illicit drugs, Colombians are extremely proud of being the producers of what has been called “the best coffee in the world.”<sup>20</sup> It is not surprising that on the webpage of “Colombia Co,” the brand that aims to improve the image of the country, there are numerous recommendations for visiting the “zona cafeteria,” where one can find part of the crops of Colombia’s most loved commodity: coffee.<sup>21</sup>

The pride in its coffee has led to the creation of one of Colombia’s most famous and beloved characters: Juan Valdez.<sup>22</sup> This fictional character is one of the most valued symbols of the country and represents the coffee growers

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13. *Colombia Demandará*, *supra* note 8.

14. Lena Mucha, *Colombia: ‘I’m Not Proud Cultivating Coca, But We Have No Choice’*, ALJAZEERA (Sept. 2, 2018), <https://www.aljazeera.com/gallery/2018/9/2/colombia-im-not-proud-cultivating-coca-but-we-have-no-choice>.

15. *Colombia Demandará*, *supra* note 8.

16. See generally Adam Kealoha Causey, *To Some, Trump’s ‘Bad Hombres’ is Much More Than a Botched Spanish Word*, PBS (Oct. 20, 2016, 5:46 PM), <https://www.pbs.org/newshour/politics/trumps-bad-hombres-draws-jeers-spanish-lessons>.

17. See Donald Trump: *Deport ‘Bad Hombres’ - Video*, GUARDIAN (Oct. 20, 2016) <https://www.theguardian.com/us-news/video/2016/oct/20/donald-trump-bad-hombres-us-presidential-debate-las-veg-as-video>.

18. Causey, *supra* note 16.

19. Julia Zapata, *¿Por qué Narco México?*, BBC MUNDO (Sept. 23, 2008, 3:13 PM), [https://www.bbc.co.uk/blogs/spanish/2008/09/por\\_que\\_narco\\_mexico.html](https://www.bbc.co.uk/blogs/spanish/2008/09/por_que_narco_mexico.html).

20. *Discover the Reasons Why Colombian Coffee is Considered One of the Best’s in the World*, COLOMBIA.CO, <https://www.colombia.co/en/trade-with-colombia/discover-the-reasons-why-colombian-coffee-is-considered-one-of-the-bests-in-the-world/> (last visited Sept. 7, 2022).

21. See *id.*

22. Karen Attman, *Who is Juan Valdez?*, FLAVORS OF BOGOTA (July 6, 2021), <https://flavorsofbogota.com/who-is-juan-valdez/#:~:text=Juan%20Valdez%20is%20a%20creation,NGO%20in%20the%20whole%20world.>

that produce, as it has been stated, “the world’s finest coffee.”<sup>23</sup> Juan Valdez’s image has been promoted around the world, with its products sold in Colombian airports, airlines, shopping centers, and coffee shops, and it represents part of the Colombian tradition.<sup>24</sup> No Colombians, or at least not any I could think of, would feel embarrassed if someone were to link their country to Juan Valdez or to the coffee that Colombia produces.

Likewise, Mexicans are proud producers of tequila and mezcal.<sup>25</sup> Some Mexicans also argue that they have some of the best beers in the world.<sup>26</sup> Corona, a beer company, is the most valued brand in Mexico.<sup>27</sup> Along with this, brands like Modelo, Victoria, León, Pacifico, and Montejo are within the thirty most valuable beer brands in the world.<sup>28</sup> Mexicans take such pride in these products, and they are so important for the culture in the country, that one of the ten main reasons why someone should go to Mexico is tequila.<sup>29</sup> Mexicans, like Colombians, are not offended but, on the contrary, are proud when their country is linked to the production of such beloved substances.<sup>30</sup>

Mexicans are not the only ones who are proud of their country’s production of alcohol and its quality. Other countries throughout the world fight about which one produces the best wines.<sup>31</sup> France and Italy argue over which is the better European wine producer.<sup>32</sup> Then they band together to argue with wine producers in the Americas over which production quality is better between continents.<sup>33</sup> A comparable argument occurs between Chileans and Peruvians, who debate the origin and quality of their famous liquor, pisco.<sup>34</sup> The examples of such debates are countless. People not only take pride in their country’s production of some substances, they also get

23. *Id.*

24. See Juan Valdez: *Colombia’s National Treasure*, GLOB. COFFEE REPORT (Dec. 11, 2020, 7:03 AM), <https://www.gcrmag.com/juan-valdez-colombias-national-treasure/>; Attman, *supra* note 22; *Best Places to Eat and Drink in El Dorado Airport of Bogota*, LULO COLOMBIA, <https://lulocolombia.travel/blog/best-places-to-eat-and-drink-in-el-dorado-airport-of-bogota/> (last visited Sept. 24, 2022).

25. See Rodrigo Labardini, *Tequila: Mexican Culture in Liquid Form*, AZERI OBSERVER (Nov. 6, 2020), <https://azeriobserver.az/2020/06/11/tequila-mexican-culture-in-liquid-form/>.

26. See generally Sarah Neish, *Corona Still World’s Most Valuable Brand, Despite Name Association*, DRINKS BUS. (June 3, 2021), <https://www.thedrinksbusiness.com/2021/06/corona-still-worlds-most-valuable-beer-brand-despite-name-association/>.

27. *Id.*

28. Ivette Saldaña, *Estas Son las Marcas más Valiosas en México*, EL UNIVERSAL (Feb. 28, 2020, 5:25 PM), <https://www.eluniversal.com.mx/cartera/estas-son-las-marcas-mas-valiosas-en-mexico>.

29. See generally MEXICO, <https://www.visitmexico.com/>; Labardini, *supra* note 25.

30. See generally Labardini, *supra* note 25.

31. Bright Cellars, *Fight Night, Wine Edition: France v. Italy*, GLASS HALF FULL (Oct. 9, 2017), <https://www.brightcellars.com/blog/france-v-italy/>.

32. *Id.*

33. See generally Vicki Denig, *US Wine Still Seeking Respect in Europe: The Snobbery with Which Many Europeans View US Wines is Proving Stubbornly Resistant to Change*, WINE-SEARCHER (Sept. 23, 2019), <https://www.wine-searcher.com/m/2019/09/us-wine-still-seeking-respect-in-europe>.

34. Elizabeth Trovall, *Chile vs Peru: Who Really Invented Pisco?*, CULTURE TRIP (Mar. 24, 2017), <https://theculturetrip.com/south-america/chile/articles/chile-vs-peru-who-really-invented-the-pisco-sour/>.

competitive with other producers of the substance and turn to demonizing certain users of similar substances that are outside their familiarity.<sup>35</sup> In fact, while the use of legal substances like alcohol and coffee are generally tolerated, those who use illegal substances like cannabis, cocaine, heroin, or amphetamines almost always face some sort of social condemnation.<sup>36</sup> Users of these illegal substances are considered addicts: ill people who should be treated as criminals and removed from society.<sup>37</sup>

In Colombia, for instance, an opinion leader and dean of social sciences at a well-known university admitted that she was a recreational consumer of cannabis during a radio program.<sup>38</sup> The avalanche of criticisms was massive.<sup>39</sup> From government officials to academics and journalists, it was said that as a professor, she should be a role model, and they criticized that her affirmations promoted something bad: cannabis.<sup>40</sup> Some people even requested her resignation as columnist, dean, and professor.<sup>41</sup> She was so bullied on social media that she had to write a column responding to the criticism.<sup>42</sup>

Similarly, Paulina Rubio, a well-known Mexican singer, did a live video on Instagram during the COVID-19 pandemic that unleashed major indignation and critiques on social media.<sup>43</sup> In the video, the artist appears speaking slowly, misusing words, and at some point bending down, which was interpreted as her doing cocaine.<sup>44</sup> The reaction against the video was

35. See *infra* Part I.

36. See *infra* Part I.D.

37. See *id.*

38. “Me considero consumidora recreativa”: Sandra Borda, CARACOL RADIO, (Sept. 27, 2018, 9:43 PM), [https://caracol.com.co/programa/2018/09/05/hora\\_20/1536105364\\_272131.html](https://caracol.com.co/programa/2018/09/05/hora_20/1536105364_272131.html).

39. “El Gobierno Está Penalizando el Consumo de Drogas por la Puerta de Atrás”: Sandra Borda, SEMANA (June 9, 2018), <https://www.semana.com/nacion/articulo/entrevista-a-sandra-borda-sobre-decreto-de-decomiso-a-drogas/582123>.

40. *Id.* Note the polemic caused by this assertion. Germán Espejo, José Obdulio Gaviria Atacó a Sandra Borda por su Confesión de Marihuana Recreativa, LA FM RADIO (Sept. 10, 2018), <https://www.lafm.com.co/politica/jose-obdulio-gaviria-ataco-sandra-borda-por-su-confesion-de-marihuana-recreativa>; Choque entre Vicky Dávila y Sandra Borda por Dosis Mínima, KIENYKE (Oct. 1, 2018, 12:06 PM), <https://www.kienyke.com/politica/choque-entre-vicky-davila-y-sandra-borda-por-dosis-minima>.

41. See, e.g., @fabioarevalo, TWITTER (Sept. 5, 2018, 8:13 PM), <https://twitter.com/fabioarevalo/status/1037403418757873664>; @sopatro, TWITTER (Sept. 6, 2018, 3:13 PM), <https://twitter.com/sopatro/status/1037675151905759233>.

42. La “Confesión”: Una Columna de Sandra Borda, SEMANA (Sept. 24, 2018), <https://www.semana.com/periodismo-cultural—revista-arcadia/articulo/la-confesion-una-columna-de-sandra-borda/71130/>.

43. La Bochornosa Reunión por Videoconferencia de Paulina Rubio con sus Fans, EL PAÍS (Apr. 20, 2020, 6:40 PM), <https://elpais.com/gente/2020-04-20/el-gesto-feo-y-bochornoso-de-paulina-rubio-con-sus-fans.html> [hereinafter *Videoconferencia*].

44. Paulina Rubio Protagoniza Bochornoso Directo en Macro Festival Benéfico, CHI. TRIB. (Apr. 20, 2020, 9:36 AM), <https://www.chicagotribune.com/espanol/entretenimiento/sns-es-paulina-rubio-one-world-together-at-home-coronavirus-20200420-izczyak3e5bihl4atzj5f7w37u-story.html> [hereinafter *Rubio Protagoniza*].

massive.<sup>45</sup> People were offended by the poor example being set by a celebrity like her.<sup>46</sup> They wondered: how could she do cocaine in a video on social media?<sup>47</sup> People were disturbed by seeing a person under the influence of drugs.<sup>48</sup> The indignation was so massive that different media outlets throughout the world labeled the incident as “regrettable,” “shameful,” “shocking,” and “embarrassing.”<sup>49</sup> Users on twitter said it was a “terrible example,”<sup>50</sup> “a downgrade,”<sup>51</sup> and that she “crossed the line,”<sup>52</sup> among other things. There were also some memes created using the clip with the caption “clean yourself addict.”<sup>53</sup>

On the contrary, no one has dared to criticize a journalist who had a program called “un café con Galat” (a “Coffee with Galat” in English) where he would consume caffeine during the show.<sup>54</sup> People generally agree that drinking coffee is completely normal and would not consider those who drink it to be addicts in need of rehabilitation. Similarly, no scandal breaks out when a public figure is seen drinking or admits to drinking alcohol. For instance, one of the most popular radio channels in Colombia, W Radio, has a program where the host plays music while drinking alcohol. This program was a regular part of the schedule during the COVID-19 crisis. The morning radio show on W Radio promotes the program and its hosts have admitted that the DJ makes cocktails while playing music. No one was outraged by this open and public consumption of alcohol.

There are also major criticisms when the crops of coca or cannabis increase in a specific country.<sup>55</sup> For example, every time that the White House reports an increase in the hectares of coca crops in Colombia, which

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45. *Videoconferencia*, *supra* note 43.

46. *Id.*

47. *Id.*

48. *Id.*

49. *See id.*; *Rubio Protagoniza*, *supra* note 44; *Paulina Rubio Apareció en un Directo en Este Estado y Tiene a las Redes Escandalizadas*, AS TIKITAKAS (Apr. 19, 2020, 10:05 PM), [https://as.com/tikitakas/2020/04/19/videos/1587319920\\_352680.html](https://as.com/tikitakas/2020/04/19/videos/1587319920_352680.html).

50. @ASnutiltel, TWITTER (Apr. 20, 2020, 9:23 AM), [https://twitter.com/abc\\_es/status/1252205374356275200](https://twitter.com/abc_es/status/1252205374356275200).

51. @gyumisoo, TWITTER (Apr. 19, 2020, 4:44 PM), <https://twitter.com/gyumisoo/status/1251974969547984899?lang=en>.

52. @angelloherre, TWITTER (Apr. 20, 2020, 3:43 AM), <https://twitter.com/angelloherre/status/1252050248500903938>.

53. Photographs of Paulina Rubio, *Los Divertidos Memes que Dejó el Bochornoso Live de Paulina Rubio*, EL HERALDO (Apr. 20, 2020), <https://www.elferaldo.hn/fotogalerias/entretenimiento/los-divertidos-memes-que-dejo-el-bochornoso-live-de-paulina-rubio-EAEH1373968#image-8>.

54. *See* Canal Teleamiga, *TeleAmiga - Un Cafe Con Galat 10 de Octubre.AVI*, YOUTUBE (Oct. 16, 2012), <https://www.youtube.com/watch?v=pRLWsWjplXY>.

55. *Updated: ONDCP Releases Data on Coca Cultivation and Potential Cocaine Production in the Andean Region*, THE WHITE HOUSE, (July 16, 2021), <https://www.whitehouse.gov/ondcp/briefing-room/2021/07/16/ondcp-releases-data-on-coca-cultivation-and-potential-cocaine-production-in-the-andean-region/>.



has happened in great proportions since 2013, critiques are made about the South American governments, and there is massive outrage.<sup>56</sup> There is a similar outcry when the demand for other illicit substances increases.<sup>57</sup> In these situations, people hold politicians responsible for their inaction against drugs and become worried about the gravity of the situation.<sup>58</sup>

In contrast, however, no one was concerned with the fact that alcohol sales and consumption rose drastically amid the COVID-19 pandemic, despite this industry seeing the largest spike in sales of all substances.<sup>59</sup> Different media, as well as some governments, did not see this as bad news but as good news; at least some sectors of the economy were growing in the middle of the horrible crisis.<sup>60</sup>

Tequila, mezcal, beer, coffee, cocaine, cannabis, and opioids are all psychoactive substances – or contain, as in the case of marijuana, different psychoactive substances – since part of their influence is of mental functions.<sup>61</sup> When used, all of these substances alter either a person's motivation, attention, consciousness, impulse, mood, perception, cognition, or behavior.<sup>62</sup>

The question is, then, why are Colombians and Mexicans pleased to be linked to the production and trade of some of those substances, such as coffee and alcohol, yet are completely ashamed when they are linked to others like

56. See, e.g., *¿Qué vamos a hacer con los cultivos de coca?*, EL ESPECTADOR (Sep. 17, 2017, 5:00 AM), <https://www.elespectador.com/opinion/editorial/que-vamos-hacer-con-los-cultivos-de-coca-articulo-713458/#>; *Por los Cielos: Cómo se disparó el cultivo de coca en Colombia*, N.Y. TIMES, (Sep. 21, 2018), <https://www.nytimes.com/es/2018/09/21/espanol/america-latina/cultivo-coca-colombia-duque.html>.

57. See generally Cornyn: *Biden's Border Inaction Fueling Crime Spike, Drug Overdoses Nationwide*, JOHN CORNYN (Apr. 28, 2022), <https://www.cornyn.senate.gov/content/news/cornyn-biden%E2%80%99s-border-inaction-fueling-crime-spike-drug-overdoses-nationwide>.

58. *Id.*

59. See generally *Shoppers Swap Clothes for Alcohol Amid Record Sales Drop*, BBC NEWS (Apr. 24, 2020), <https://www.bbc.com/news/business-52408885> [hereinafter *Shoppers*]; Alexandre Tanzi & Steve Matthews, *Americans are Buying More Alcohol to Drink at Home*, BLOOMBERG (Apr. 3, 2020, 10:27 AM), <https://www.bloomberg.com/news/articles/2020-04-03/alcohol-sales-gain-as-americans-imbibe-at-home-chart>; Phillip Inman, *UK Lockdown Sends Retail Sales to Record Low, But Alcohol Sales Rise*, GUARDIAN (Apr. 24, 2020), <https://www.theguardian.com/business/2020/apr/24/uk-lockdown-sends-retail-sales-to-record-low-but-alcohol-sales-rise>; Thomas Pellechia, *Online Alcohol Sales Are Rising, But Will it Be a Long-Term Change?*, FORBES (Apr. 9, 2020, 11:24 AM), <https://www.forbes.com/sites/thomaspellechia/2020/04/09/the-pandemic-may-provide-the-stimulus—e-commerce-alcohol-sales-have-needed/>; Jordan Valinsky, *Booze Sales are Booming as People Stockpile Alcohol . . . But It May Not Last*, CNN BUS. (Apr. 1, 2020, 9:18 AM), <https://edition.cnn.com/2020/04/01/business/alcohol-sales-coronavirus-trnd/index.html>.

60. See generally *Shoppers*, *supra* note 59; Tanzi & Matthews, *supra* note 59; Inman, *supra* note 59; Pellechia, *supra* note 59; Valinsky, *supra* note 59.

61. See MARK A. R. KLEIMAN ET AL., DRUGS AND DRUG POLICY: WHAT EVERYONE NEEDS TO KNOW 1-2 (2011) (providing definitions of psychoactive substances); ANGUS BANCROFT, DRUGS, INTOXICATION AND SOCIETY 23 (2009). Both of the aforementioned citations provide definitions of psychoactive substances.

62. KLEIMAN ET AL., *supra* note 61, at 1.

coca, cannabis, or opioids? Also, why do they demonize people that consume cannabis, yet say nothing when a person has a glass of wine or a cup of coffee? The answer to both questions seems to be obvious: when moderately consumed, coffee and alcohol cause no harm, and are even good, while cocaine, cannabis, and opioids are bad, dangerous, and cause a lot of harm.<sup>63</sup> Additionally, many would argue that neither tequila, mezcal, nor Colombian coffee is as addictive as opioids, cannabis, or cocaine. They would say the potential of harm and addiction are the reasons why the latter are forbidden by law.

This answer would not only be given by many citizens from the aforementioned Latin American countries; rather it is a belief shared around the globe.<sup>64</sup> In Muslim countries where alcohol is forbidden – such as Iran, Saudi Arabia, and some parts of India<sup>65</sup> – there are psychoactive substances that are considered evil (alcohol included) and some that are permissible (like coffee and tea).<sup>66</sup>

My aim in this paper is to challenge this traditional assumption and the narrative that it creates, which underlies the law and order paradigm,<sup>67</sup> and which supposes that legal psychoactive substances are not that harmful (and even good) while the illegal ones are evil, cause harm, and are extremely addictive.<sup>68</sup> I also aim to present how the law has contributed to creating those misconceptions and has been used to maintain them. This situation, as it will be argued, has generated terrible consequences and has deprived society from obtaining certain benefits.<sup>69</sup> By doing this, I intend to contribute to the literature that shows how the law, instead of being a solution, is

63. See *infra* Part I.

64. *Moderate Amounts of Coffee are the Best*, HARV. HEALTH PUB. (Nov. 1, 2020), <https://www.health.harvard.edu/staying-healthy/moderate-amounts-of-coffee-are-the-best>; *Alcohol: Balancing Risks and Benefits*, HARV. SCH. OF PUB. HEALTH, <https://www.hsph.harvard.edu/nutritionsource/healthy-drinks/drinks-to-consume-in-moderation/alcohol-full-story/#possible-health-benefits> (last updated Apr. 2022).

65. Helen Coffey, *Mapped: These 13 Countries Ban Booze – and You Could Be Whipped for Drinking*, EXPRESS, (Feb. 16, 2017, 4:16 PM), <https://www.express.co.uk/travel/articles/768312/countries-ban-alcohol>.

66. There is no country in the world in which every substance that alters a mental function is forbidden. For instance, countries as radical as Iran and some regions in India and Indonesia, where alcohol is forbidden, are the world's leading producers and exporters of tea and coffee (which contain caffeine) and tobacco (which has nicotine). Moreover, Bhutan is the only country in the world where tobacco is forbidden; yet, there is no prohibition on alcohol or coffee. See Tobacco Control Act of Bhutan 2010, PARLAIMENT OF BHUTAN, <https://web.archive.org/web/20120316175424/http://www.nab.gov.bt/downloadsact/Dzo76.pdf> (last visited Oct. 30, 2022).

67. By “law and order,” I refer to the political claims for a strong criminal justice system. Those claims argue that the best way to deal with the drug phenomenon is through criminal law. They consider that, by penalizing the traffic and consumption of drugs, people will produce and use less of those substances.

68. Alvaro Santos, *International Law and Its Discontents: Critical Reflections on the War on Drugs or the Role of Law in Creating Complexity*, 106 AM. SOC'Y INT'L L. PROC. 172, 174 (2012).

69. See generally *infra* Parts IV-V.

implicated in creating a problem by producing confusion, chaos, and complexity.<sup>70</sup> Finally, my aim is to show that many of the current so-called “progressive” reforms on drug control, like some cannabis legalization efforts, are not tackling the issues presented in this paper, but instead reproducing certain misconceptions.

To accomplish this goal, I divide this article into five sections. In Part I, I show the process in which a body of law, specifically the international drug control regime, has created and helped to maintain a narrative that traces a moral border between psychoactive substances.<sup>71</sup> The role of the law in shaping the morals of society has not been limited to the dichotomy of evil and non-evil substances.

As I will present in this section, the law has also contributed to the creation of a set of categories such as “crackheads,” “junkies,” “drug abusers,” and “being clean,” all of which contain a strong moral judgment and did not exist before the war on drugs started.<sup>72</sup> Furthermore, the enforcement of these laws has created characters, such as the “monsters” (the cartels, dealers, other drug traffickers and some addicts), “the victims” (the children of the world and other potential drug users), and the “saviors” (the governments and the drug enforcement agencies).<sup>73</sup>

In Part II, I present the theories behind and incentives for the law facilitating and creating such moral borders.<sup>74</sup> Specifically, I argue that the political theory that emerged with the modern state during the Enlightenment, in addition to a formalist view of the law, has helped to shape the belief that the law is good, neutral, and objective just because it is the law.<sup>75</sup> After this, I contest those theories by relying on critical theories of the law; namely, legal realism, and critical legal studies, which have shown that in reality, the law defends only select interests, distributes resources, and creates major injustices.<sup>76</sup>

In Part III, I present evidence that demonstrates that the conceptions of right and wrong perpetuated by the law are not necessarily true and have no evidence to support them, and that the categories and characters created

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70. See generally INTERNATIONAL LAW AND ITS DISCONTENTS: CONFRONTING CRISES (Barbara Stark ed., 2015); Santos, *supra* note 68, at 175-76; Chiara Giorgett, *Proceedings of the 106th Annual General Meeting: Confronting Complexity*, 106 AM. SOC'Y INT'L L. PROC. 172 (2012); Ryder McKeown, *International Law and its Discontents: Exploring the Dark Sides of International Law in International Relations*, 43 REV. INT'L STUD. 430, 433; Balakrishman Rajagopal, *International Law and Its Discontents: Rethinking the Global South*, 106 AM. SOC'Y INT'L L. PROC. 176 (2012).

71. See *infra* Part I.B.

72. BANCROFT, *supra* note 61; see *infra* Part I.

73. See *infra* Part I.D; DR. CARL L. HART, DRUG USE FOR GROWN-UPS: CHASING LIBERTY IN THE LAND OF FEAR 22 (2021) [hereinafter GROWN-UPS].

74. See *infra* Part II.

75. See *infra* Part II.

76. See *infra* Part II.

through them are based on misconceptions.<sup>77</sup> For that purpose, I bring contemporary theories of addiction and studies about the harm of the most used psychoactive substances.<sup>78</sup>

In Part IV, I demonstrate the chaos and problems those misconceptions have fostered.<sup>79</sup> Specifically, I present three issues: the discrimination and stigmatization of users; the opioid epidemic in the United States; and the impossibility of responsible consumption of illicit substances.<sup>80</sup>

In Part V, I present different benefits that our societies we are being deprived of due to the law and the mentioned misconceptions.<sup>81</sup> Finally, the article will present some concluding remarks that show how current legal reforms on drug policy are grounded in the same misconceptions.<sup>82</sup>

#### I. THE CREATION OF EVIL: THE ROLE OF THE LAW IN SHAPING THE NARRATIVE

The production and use of psychoactive substances are not new phenomena.<sup>83</sup> Drugs have been consumed in various forms in different societies for thousands of years.<sup>84</sup> The method of consumption, the type of substances used, and the perception about them has also varied over time.<sup>85</sup> As mentioned before, while today some drugs are mainly presented as and considered to be evil, like cocaine and heroin, there are others that are even promoted and widely accepted, like caffeine.<sup>86</sup> The images of these drugs, nonetheless, have not always been the same and have varied between (and even within) countries.<sup>87</sup>

Since the beginning of the 20th century, however, the image of some substances has become homogeneous throughout the world.<sup>88</sup> Countries started to be aligned in considering certain substances as harmful while others

77. See *infra* Part III.A.

78. See *infra* Part III.B.

79. See *infra* Part IV.

80. See *infra* Part IV.

81. See *infra* Part V.

82. See *infra* Conclusion.

83. I prefer to use the term “drug phenomenon” instead of “drug problem” since there is no consensus that producing and consuming drugs is a problem. See DAVID R. MARES, *DRUG WARS & COFFEE HOUSES: THE POLITICAL ECONOMY OF THE INTERNATIONAL DRUG TRADE* 1 (2006); KLEIMAN ET AL., *supra* note 61, at 2.

84. See PETER ANDREAS & ETHAN NADELMANN, *POLICING THE GLOBE: CRIMINALIZATION AND CRIME CONTROL IN INTERNATIONAL RELATIONS* 40-41 (2006); MARES, *supra* note 83, at 1.

85. Patrick Abbott & Duane M. Chase, *Culture and Substance Abuse: Impact of Culture Affects Approach to Treatment*, *PSYCHIATRIC TIMES* (Jan. 1, 2008), <https://www.psychiatristimes.com/view/culture-and-substance-abuse-impact-culture-affects-approach-treatment>.

86. Marc Lewis, *Here's Why There are No 'Good' or 'Bad' Drugs - Not Even Heroin*, *GUARDIAN*, (Jul. 14, 2016) <https://www.theguardian.com/commentisfree/2016/jul/14/drugs-policy-heroin-psychoactive-substances>.

87. Abbott & Chase, *supra* note 85.

88. MARES, *supra* note 83, at 2.

were considered not as dangerous or even good.<sup>89</sup> There are some outliers, as for instance certain Islamic countries ruled by Sharia Law, where alcohol is considered as evil despite the majority of the world seeing it as something permissible or even good.<sup>90</sup> Another example of an outlier is that in some indigenous communities in Bolivia and Peru, consumption of coca leaves is seen as something sacred, good, and an essential part of their cultural traditions, despite the majority of the world considering the substance produced from those leaves bad and highly addictive.<sup>91</sup> Those cases are, nevertheless, more the exception than the rule. But even in these exceptions, as well as in the rest of the more typical cases of perceptions of substances, there is one thing in common: law was a crucial aspect in the development of the general perception of every psychoactive substance.<sup>92</sup> If the drug is legal, its consumption is tolerated, people are usually willing to consume it, and its users are not stigmatized. On the contrary, if the substance is criminalized, it means, for many, that it is harmful, addictive, and bad, and its consumers are demonized and discriminated against.

The role of the law, as it will be shown below, has deeply shaped these narratives.<sup>93</sup> Robert Cover argues in his seminal piece, *Nomos and Narrative*, that the law has molded our understanding of the world through the symbolic effect it has.<sup>94</sup> The law, Cover claims, is “not merely a system of rules to be observed, but a world in which we live[;] . . . [and it] is as much ‘our world’ as is the physical universe of mass, energy, and momentum.”<sup>95</sup> In this case, the drug control system is not just a set of rules to be followed, but it has also influenced our perception of people, substances, and other countries in what we consider right or wrong and the way we explain and justify some actions.<sup>96</sup> In other words, these laws have shaped our reality and the world in which we live. It is not a coincidence that the image of certain psychoactive substances became negative all around the world as governments began to criminalize them and develop anti-drug regimes, prohibiting their production, trade, and consumption.

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89. *Id.* at 2.

90. Aizaz Khan, *Why Alcohol Is Prohibited in Islam*, REV. OF RELIGIONS (Apr. 24, 2016), <https://www.reviewofreligions.org/12519/why-alcohol-is-prohibited-in-islam/>.

91. Emily Hwang, *Coco Is Not Synonymous with Cocaine: Coco Culture in Bolivia*, UNIV. OF PITTSBURGH: PANORAMA SCHOLARLY PLATFORM (Nov. 28, 2016), <https://www.panoramas.pitt.edu/art-and-culture/coca-not-synonymous-cocaine-coca-culture-bolivia#:~:text=The%20primary%20use%20for%20the,similar%20cultural%20practices%20as%20well>.

92. See Cover, *supra* note 1, at 5.

93. See Cover, *supra* note 1, at 4-5; Santos, *supra* note 68.

94. Cover, *supra* note 1, at 4-5.

95. *Id.*

96. *Id.* at 9.

*A. Before the Creation of the Monster: Freud, Coca-Cola, and Opium*

At the end of the 19th century, many of the substances that are now considered evil were widely available, extensively consumed, and praised for their incredible benefits.<sup>97</sup> Cocaine, for instance, was popular in Europe and the United States.<sup>98</sup> This substance started to be widespread as a remedy for sinusitis and hay fever, as well as a cure to different types of addictions.<sup>99</sup> Many members of the medical community praised the effects of this drug and promoted its consumption.<sup>100</sup> One example is William Hammond, a former surgeon general of the army, who “swore by it [cocaine] and took a wineglass of it with each meal.”<sup>101</sup> Hammond “was also proud to announce cocaine as the official remedy of the Hay Fever Association, a solid endorsement for anyone.”<sup>102</sup>

Hammond was not alone. Other prominent doctors, such as surgeons William Halsted, Gilles de la Tourette, and Karl Koller, wrote about the benefits of the substance.<sup>103</sup> Among this group was also one of the most influential scientists and medical practitioners of the past centuries: Sigmund Freud.<sup>104</sup> One of the main benefits, according to Freud in a letter he wrote to his fiancé, was to treat depression.<sup>105</sup> He also admitted in this letter, “a small dose [of cocaine] lifted [me] to the heights in a wonderful fashion. I am just now collecting literature for the song of praise to the magical substance.”<sup>106</sup> He learned about cocaine in medical journals and after extensive research, he published *Uber Coca* in 1884, a book where he applauded and described all the advantages of the drug.<sup>107</sup> During this period, cocaine was considered the miracle drug – a cure for almost everything: tuberculosis, stomach pains, headaches, flatulence, and hypochondria, among others.<sup>108</sup> It was also thought to help a person when he or she was nervous or needed energy.<sup>109</sup>

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97. MARES, *supra* note 83, at 2; DAVID F. MUSTO, *THE AMERICAN DISEASE: ORIGINS OF NARCOTIC CONTROL* 7 (3d ed. 1999).

98. MUSTO, *supra* note 97, at 7.

99. *Id.*

100. *Id.*

101. *Id.*

102. *Id.*

103. *See generally* HOWARD MARKEL, *AN ANATOMY OF ADDICTION: SIGMUND FREUD, WILLIAM HALSTEAD, AND THE MIRACLE DRUG COCAINE* (2011).

104. *See* MUSTO, *supra* note 97, at 7.

105. FREDERICK C. CREWS, *FREUD: THE MAKING OF AN ILLUSION* 70 (2017).

106. *Id.*

107. Howard Shaffer & Sigmund Freud, *Uber Coca: Freud's Cocaine Discoveries*, 1 J. SUBSTANCE ABUSE TREATMENT 205, 212 (1984).

108. *See* MARKEL, *supra* note 103, at 58-59.

109. *Id.*

Both medical practitioners and pharmaceutical companies promoted and approved cocaine consumption.<sup>110</sup>

In addition to medical endorsement, cocaine was viewed positively by other members of society.<sup>111</sup> Vin Mariani, a substance made with red wine and cocaine, was very popular throughout multiple sectors of European society in the late 19th century.<sup>112</sup> Over 8,000 physicians approved said substance, and athletes, artists, writers, sculptors, painters, and even Queen Victoria “not only gave Mariani’s wine a gold medal and diploma, but named it the ‘wine for athletes.’”<sup>113</sup> Even more interesting, this substance gained ecclesiastic support by two heads of the Catholic church: Popes Pius X and Leo XIII.<sup>114</sup> They both applauded the substance, and Leo participated in giving it a Vatican gold medal.<sup>115</sup> Vin Mariani’s reputation was so good that a similar product started to be produced and commercialized in the United States: Coca Cola.<sup>116</sup> Until 1903, the most famous soda drink in the world today contained cocaine in its formula, which was then replaced by caffeine.<sup>117</sup> Other products such as wines, sprays, soda pops, liqueur, tablets and even cigarettes also contained cocaine.<sup>118</sup>

Opium and some of its derivatives, like heroin, were also considered good and relatively harmless during the 19th century and before.<sup>119</sup> During a great part of the 19th century, “the British government was the principal sponsor of the opium trade.”<sup>120</sup> In the United States, crude opium and many of its derivatives were available and praised and were introduced by the medical community.<sup>121</sup> “Many proprietary medicines that could be bought at any store or by mail order contained morphine, cocaine, laudanum, or (after 1898) heroin.”<sup>122</sup>

As for recreation, many men even preferred to consume opium than alcohol to avoid appearing as alcoholics.<sup>123</sup> It was worse to be seen under the effects of alcohol than after consuming certain opium products such as

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110. MUSTO, *supra* note 97, at 3.

111. *See infra* notes 112-25 and accompanying text.

112. *See generally* MUSTO, *supra* note 97; MARKEL, *supra* note 103.

113. JOSEPH KENNEDY, COCA EXOTICA: THE ILLUSTRATED STORY OF COCAINE 86 (1985).

114. *Id.*

115. *Id.*

116. MARKEL, *supra* note 103, at 58.

117. Dan Lewis, *What Happened to the Cocaine in Coca-Cola?* BUS. INSIDER (Feb. 24, 2012, 5:54 PM), <https://www.businessinsider.com/what-happened-to-the-cocaine-in-coca-cola-2012-2>.

118. MUSTO, *supra* note 97, at 7.

119. *Id.* at 1.

120. ANDREAS & NADELMANN, *supra* note 84, at 8.

121. MUSTO, *supra* note 97, at 3.

122. *Id.*

123. HUMBERTO FERNANDEZ & THERISSA A. LIBBY, HEROIN: IT’S HISTORY, PHARMACOLOGY, AND TREATMENT 12 (2d ed. 2011).

Laudanum, which is odorless and less noticeable than alcohol.<sup>124</sup> As for women, since “it was not socially acceptable” to see them in “bars or saloons,” it was better to consume Laudanum, which was “[e]asily available at the local apothecary.”<sup>125</sup>

The first general proscription of opium in the United States was in 1909, and only opium in its smoked version was outlawed.<sup>126</sup> This prohibition was neither due to the addictiveness of the substance, nor because it was considered harmful, but because it had been associated since the mid-century with the Chinese, a disliked minority at that time in the United States.<sup>127</sup> The liquid form Americans consumed to similar effect remained legal, while the smoked version used by the Chinese was banned.<sup>128</sup> As can be seen and as pointed out by David Musto, “[c]ocaine and heroin were both introduced from excellent laboratories by men with considerable clinical experience who judged them to be relatively harmless. . . . Opiates and cocaine became popular – if unrecognized – items in the everyday life of Americans.”<sup>129</sup> In Europe, the situation was the same, and various Asian countries, especially China, were active producers and consumers of opium.<sup>130</sup>

As shown, some drugs considered evil today were praised by many.<sup>131</sup> In contrast, some substances accepted today were demonized in the past.<sup>132</sup> The greatest example of the latter is alcohol, which was rejected by society during U.S. prohibition and now is an essential substance for many North Americans.<sup>133</sup> The transition of alcohol from being discouraged to being praised is greatly described in Garrett Peck’s book *The Prohibition Hangover: Alcohol in America From Demon Rum to Cult Cabernet*.<sup>134</sup> In this book, Peck shows how alcohol passed from being assessed as the worst poison during prohibition to being considered today as “a miracle substance that prevents Alzheimer disease, diabetes, heart disease, prostate cancer, and aging.”<sup>135</sup> Today, the substance is engraved in American culture and part of

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124. *Id.* at 12-13.

125. *Id.*

126. *See* OPIUM AND NARCOTIC LAWS (compiled by Gerald P. Walsh Jr., 1981) (Public Law No. 221, 60th Congress, approved February 9, 1909, “prohibit[ed] the importation and use of opium for other than medical purposes”).

127. MUSTO, *supra* note 97, at 3; BANCROFT, *supra* note 61, at 116.

128. FERNANDEZ & LIBBY, *supra* note 123, at 13-15.

129. MUSTO, *supra* note 97, at 5.

130. *See* ANDREAS & NADELMANN, *supra* note 84, at 38; MUSTO, *supra* note 97, at 3, 5.

131. *See* FERNANDEZ & LIBBY, *supra* note 123, at 12.

132. *See* ANDREAS & NADELMANN, *supra* note 84, at 41.

133. U.S. CONST. amend. XVIII, § 1; *Super Bowl Food by the Numbers*, HUNGRY FAN, <https://hungryfan.com/blogs/resources/super-bowl-food-by-the-numbers> (last visited Sept. 7, 2022).

134. *See* GARRETT PECK, *THE PROHIBITION HANGOVER: ALCOHOL IN AMERICA FROM DEMON RUM TO CULT CABERNET* 5 (2009).

135. *Id.*



its most important religious and cultural events. At the end, who can imagine having a Superbowl or a baseball match without beer?

*B. The Beginning of the Narrative Worldwide: The Birth of the International Drug Control System*

Although cocaine and heroin were popular and promoted in Europe and in the United States, they did not have the approval of the entire population.<sup>136</sup> Efforts to forbid both opiates and cocaine in the United States were amplified when the number of users began to increase.<sup>137</sup> Among the people who opposed it, there were different missionaries and moral entrepreneurs who started lobbying for the prohibition of substances that could alter a person's consciousness.<sup>138</sup> This included, in addition to the mentioned substances, alcohol as well.<sup>139</sup> Some of those efforts succeeded when different states in the United States enacted restrictive laws on certain substances, but the first international instrument controlling the production of a specific substance appeared in 1912: the Hague Opium Convention.<sup>140</sup> The treaty was first signed by China, France, Germany, Italy, Japan, the Netherlands, Persia, Portugal, Russia, Siam, the United Kingdom, and the United States, but by 1919, it had almost universal adherence when around sixty countries, some of which signed the Peace Treaties of Versailles, became parties.<sup>141</sup> The International Opium Convention not only controlled the exports of opium and morphine but it also included cocaine and heroin.<sup>142</sup>

Before this instrument, there were no global patterns on drug policy. Actually, there were no multilateral agreements controlling the use or production of mental function-altering substances, nor a worldwide agreement on which substances should be proscribed.<sup>143</sup> After this treaty, however, the world started a process in which substances were divided into two categories: legal and illegal.<sup>144</sup> The first substances to be controlled, the opioids and cocaine, were later joined by the prohibition on cannabis and a long list of psychoactive substances that are still included in the current international drug control system established in 1961, of which the main objective was to unify in one instrument the different treaties regarding drug control.<sup>145</sup>

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136. *See supra* Part I.A.

137. *See* MUSTO, *supra* note 97, at 10.

138. *Id.*; ANDREAS & NADELMANN, *supra* note 84, at 38.

139. MUSTO, *supra* note 97, at xiii.

140. BANCROFT, *supra* note 61, at 116; MUSTO, *supra* note 97, at 8-9.

141. BANCROFT, *supra* note 61, at 117.

142. *Id.* at 116.

143. *Id.* at 117.

144. *Id.*

145. *Id.* at 116-17.

This legal system is comprised by the United Nations' drug control treaties, namely: the Single Convention on Narcotic Drugs of 1961 (as amended by the 1972 Protocol), the Convention on Psychotropic Substances of 1971, and the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988.<sup>146</sup> The 1961 Convention includes four schedules, which divide the psychoactive substances depending on their importance for scientific and health matters and their dangerousness.<sup>147</sup> Today, a great majority of the countries in the world are part of this legal system and have implemented internal laws, policies, and measures to enforce it.<sup>148</sup> The principal goal, since its foundation, has been clear: a drug-free world.<sup>149</sup> Or, more precisely, a world free of the illicit psychoactive substances.

This international regime privileged some psychoactive substances (the legal) over others (the illicit).<sup>150</sup> It crafted two bags: one of evil, harmful, addictive, morally-deficient substances, and a second bag of harmless, non-addictive substances used by people without problems.<sup>151</sup> Since the beginning of this regime, this division has been presented as natural, objective, and scientific.<sup>152</sup> If the substances are placed in one bag, it means there are objective reasons to include them in it; it is for the well-being of human kind, it is an uncontroversial truth, and there is strict ideology behind those decisions.<sup>153</sup>

### C. *The Creation of Evil: The War on Drugs*

It should be noted, this set of rules alone did not create the images of psychoactive substances or our perceptions about them.<sup>154</sup> The narratives giving meaning to this legal system are, as Cover would argue, what make it exist and what permeate our perception of the world.<sup>155</sup> In Cover's words,

[t]he rules and principles of justice, the formal institutions of the law, and the conventions of a social order are, indeed, important to that world; they are, however, but a small part of the normative universe that ought to claim our attention. *No set of legal institutions or*

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146. BANCROFT, *supra* note 61, at 117.

147. *Id.* at 118.

148. *See* Protocol Amending the Single Convention on Narcotic Drugs, Mar. 25, 1972, 26 U.S.T. 1439.

149. BANCROFT, *supra* note 61, at 118.

150. *Id.* at 119.

151. *Id.*; Cover, *supra* note 1, at 7.

152. *See* BANCROFT, *supra* note 61, at 118.

153. *Id.*

154. *See id.* at 119.

155. *See* Cover, *supra* note 1, at 4.

*prescriptions exists apart from the narratives that locate it and give it meaning.*<sup>156</sup>

Those narratives, according to Cover, are “interpretative commitments,” which can come from officials as well as from others and determine what the law is.<sup>157</sup> The law is not only an arrangement of normative behavior for people to adhere to; it is also “a resource in signification that enables us to submit, rejoice, struggle, pervert, mock, disgrace, humiliate, or dignify.”<sup>158</sup>

The language used in the conventions presents illicit psychoactive substances as a threat to humankind and as a great evil that must be combatted.<sup>159</sup> The words employed are not minor: “[a]mong all the possible wrongdoing and bad things that exist in the world, . . . drugs are the only one to be labelled as ‘evil’ in international law.”<sup>160</sup> The preamble of the 1961 Convention established that “addiction to narcotic drugs constitutes a *serious evil* for the individual and is fraught with social and economic danger to mankind.”<sup>161</sup> In similar terms, the 1971 preamble stated that the parties are “concerned with the health and welfare of mankind” and preoccupied with “the public health and social problems” that result when abusing psychotropic substances.<sup>162</sup> Even stronger words are used in the 1988 Convention, which affirmed that “*narcotic drugs and psychotropic substances . . . pose a serious threat to the health and welfare of human beings* and adversely affect the economic, cultural and political foundations of society.”<sup>163</sup> As it can be seen, the justifications for all of these international treaties do not differentiate on the different psychoactive substances, nor on their harm, but refer to all of them as a threat to humanity – an enemy that poses great danger to society.<sup>164</sup>

The official records of the plenary meetings in which the treaties were prepared also have similar narratives, shown by the following examples.<sup>165</sup> In his first intervention, the elected chairman for the preparatory meetings of

156. *Id.* (emphasis added).

157. *Id.* at 7.

158. *Id.* at 8.

159. See 1971 Convention at Vienna, Feb. 21, 1971, 32 U.S.T. 543, at 3 [hereinafter 1971 Convention]; Single Convention on Narcotic Drugs, 1961, Mar. 30, 1961, 18 U.S.T. 1407, Preamble [hereinafter 1961 Convention]; United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Dec. 20, 1988, 1988 U.S.T. 194, at 19-20 [hereinafter 1988 Convention].

160. Christopher Hobson, *Challenging ‘Evil’: Continuity and Change in the Drug Prohibition Regime*, 51 INT’L POL. 525 (2013).

161. 1961 Convention, *supra* note 159, Preamble (emphasis added).

162. 1971 Convention, *supra* note 159, at 3.

163. 1988 Convention, *supra* note 159, at 19-20 (emphasis added).

164. See 1961 Convention, *supra* note 159, Preamble; 1971 Convention, *supra* note 159, at 3; 1988 Convention, *supra* note 159, at 19-20.

165. See *infra* notes 166-71.

the 1961 Convention said that narcotic drugs were a “serious public evil,”<sup>166</sup> a comment later echoed and repeated.<sup>167</sup> Some state representatives stated, *inter alia*, that narcotic drugs were one of the most important “problems of an economic, social, cultural or humanitarian character.”<sup>168</sup> In a similar way, the acting president of the preparatory sessions for the 1988 Convention said that drugs were a “particularly *grave threat*, not only to health and individual well-being but to society as a whole” and “a common *enemy* whose tentacles now infiltrated all regions of the world.”<sup>169</sup> Therefore, the president continued, the parties of the conventions should “unite in the defense of the human race against the common enemy.”<sup>170</sup> The representative of Colombia went even further by saying the “common enemy” was “the *worst* enemy of the human race”.<sup>171</sup> In sum, the dominant narrative has been that illicit drugs are evil, threaten humanity, and constitute one of the biggest problems in the world.

The Conventions, bringing back Cover’s arguments, were not alone in shaping the perceptions about drugs.<sup>172</sup> Narratives from different sources started giving meaning to this body of law and used it to disgrace and humiliate some people and psychoactive substances while dignifying others.<sup>173</sup> The main narrative was built by the United States government, the principal promoter and exporter of the prohibition on drug regimes, which crafted an enemy and declared war against it.<sup>174</sup> It was President Richard Nixon, in a speech to the nation on June 17, 1971, who announced “America’s public enemy number one in the United States [was] drug abuse” and stated that “[i]n order to fight and defeat this enemy it [was] necessary to wage a new, all-out offensive.”<sup>175</sup> The message was clear: illicit drugs are evil and are a major problem and enemy of the United States.<sup>176</sup> Illicit drugs, in President Nixon’s mind, were a greater problem than inequality, poverty,

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166. U.N. Conference for the Adoption of a Single Convention on Narcotic Drugs, U.N. Doc. E/CONF.34/24 (Vol. I), at 2 (Jan. 24, 1961) [hereinafter 1961 Convention Summary Records].

167. *Id.* at 56, 103-04, 112.

168. See *id.* at 7.

169. U.N. Conference for the Adoption of a Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, U.N. Doc. E/CONF.82/16/Add.1 (Vol. II), at 1, 3 (Nov. 25, 1988) (emphasis added) [hereinafter 1988 Convention Summary Records].

170. *Id.* at 3.

171. *Id.* at 9-10 (emphasis added).

172. Cover, *supra* note 1, at 4; see ANDREAS & NADELMANN, *supra* note 84, at 97.

173. See generally DAVID NUTT, DRUGS WITHOUT THE HOT AIR: MINIMISING THE HARMS OF LEGAL AND ILLEGAL DRUGS 280 (2012) [hereinafter, HOT AIR].

174. ANDREAS & NADELMAN, *supra* note 84, at 38.

175. Richard Nixon, 37th President of the United States: 1969-1974, *Remarks About an Intensified Program for Drug Abuse Prevention and Control (June 17, 1971)*, AM. PRESIDENCY PROJECT, <https://www.presidency.ucsb.edu/documents/remarks-about-intensified-program-for-drug-abuse-prevention-and-control>.

176. *Id.*

homicide rates, and international wars.<sup>177</sup> Since then, a tougher crusade against illicit drugs, its producers, traffickers, and consumers has spread throughout the world, creating The War on Drugs.<sup>178</sup>

Ronald Reagan's views followed the same direction as Nixon's; however, he launched an even harder war on drugs.<sup>179</sup> In a famous speech in 1986, President Reagan stated that "[d]rugs are menacing our society.<sup>180</sup> They're threatening our values and undercutting our institutions. They're killing our children. [N]o one is safe from [the drug problem]."<sup>181</sup> His wife Nancy's statements were even more overwhelming:

[D]rug abuse concerns every one of us, all the American family. Drugs steal away so much. They take and take, until finally every time a drug goes into a child, something else is forced out, like love and hope and trust and confidence. *Drugs take away the dream from every child's heart and replace it with a nightmare.* And it's time we in America stand up and replace those dreams. . . . There's no moral middle ground. Indifference is not an option. *We want you to help us create an outspoken intolerance for drug use.* For the sake of our children, I implore each of you to be *unyielding and inflexible in your opposition to drugs.*<sup>182</sup>

The most powerful authority in the United States was not the only one building the drug enemy; other officials, such as Harry Anslinger, who presided over the Federal Bureau of Narcotics for over thirty years, also added to the narrative.<sup>183</sup> Anslinger argued marijuana enables harshness within individuals leading to rape, murder, and other crimes due to mental deterioration.<sup>184</sup> With this narrative Anslinger contributed to the later construction of the "gateway theory," which argued that if you smoked marijuana, you would be driven to consume other drugs and subsequently become addicted.<sup>185</sup>

The United States used different strategies to promote the war on drugs and spread these narratives around the world.<sup>186</sup> Agents from the United

177. See *id.*; HOT AIR, *supra* note 173, at 264; MARES, *supra* note 83, at 121, 125.

178. See HOT AIR, *supra* note 173, at 280-81.

179. See ANDREAS & NADELMANN, *supra* note 84, at 127.

180. Reagan Foundation, *President Reagan's Address to the Nation on the Campaign Against Drug Abuse on September 14, 1986*, YOUTUBE (Aug. 3, 2011), [https://www.youtube.com/watch?v=Gj8gAQ\\_cQ7Q&t=20s](https://www.youtube.com/watch?v=Gj8gAQ_cQ7Q&t=20s).

181. *Id.*

182. *Id.* (emphasis added).

183. HARRY J. ANSLINGER & WILL OURSLER, *THE MURDERERS: THE STORY OF THE NARCOTICS GANGS 3* (Farrar, Straus and Cudahy, 2d ed. 1961).

184. *Id.* at 38.

185. See *generally id.*

186. ANDREAS & NADELMANN, *supra* note 84, at 38.

States government were sent to other countries in order to assure that the campaign spread.<sup>187</sup> The agents were expected to obtain information for criminal proceedings, “push for structural changes in drug enforcement . . . to lobby for tougher laws, to train local police in drug enforcement techniques, and to sensitize local officials to U.S. concerns.”<sup>188</sup>

Three major changes can be identified in different countries as a result of the United States’ international enforcement of laws against drug use, production, and trade, therefore demonstrating the success of the strategy.<sup>189</sup> First, many countries that did not have specialized agencies in drug control created them.<sup>190</sup> Second, the United States’ investigative techniques for drug trafficking cases became implemented throughout the rest of the world.<sup>191</sup> This included—inter alia, undercover operations, plea bargaining to reduce charges, and immunity offers for informants.<sup>192</sup> Despite the fact that many countries, especially civil law ones, considered the techniques unnecessary, illegal, and unacceptable, they started applying these methods when the anti-drug narrative permeated their society and they started to believe that illicit drugs were their major enemy.<sup>193</sup> Third, the perception about illicit drugs as a problem changed, as well as the priority to fight them.<sup>194</sup> It is interesting to see how in the preparatory sessions for the 1961 Convention many countries stated that illicit drugs were “not a problem” within their boundaries.<sup>195</sup> This differed greatly from the preparatory sessions for the 1988 Convention, where almost all parties established that drugs were a major threat to their countries.<sup>196</sup>

The success of the internationalization of the fight against illicit drugs is undeniable.<sup>197</sup> From a world with different perspectives, objectives, and priorities with regard to psychoactive substances at the end of the 19th century, the world turned into a place with a clear and unified political goal during the 20th century: a drug free world.<sup>198</sup> It is not a coincidence that the banner for the United Nations General Assembly’s special session in

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187. *Id.* at 130.

188. *Id.*

189. *Id.*

190. *Id.* at 130-31.

191. ANDREAS & NADELMANN, *supra* note 84, at 131.

192. *Id.*

193. *Id.*

194. *Id.*

195. 1961 Convention Summary Records, *supra* note 166, at 16, 104, 107 (statements of the representatives from the Philippines, Uruguay, Indonesia).

196. 1988 Convention Summary Records, *supra* note 169, at 8-10.

197. *See generally* ANDREAS & NADELMANN, *supra* note 84, at 131.

198. *Id.* at 130-31.

June 1998 was “A Drug-Free World. We Can Do It.”<sup>199</sup> Nor is it a surprise that in his opening statement, Kofi Annan, Secretary General of the organization stated:

It is my hope that when historians study the work of humankind in the field of drug control, they will write about the next few days as . . . the time when the international community found common ground in the mission to create momentum towards a drug free world in the twenty-first century.<sup>200</sup>

What the banner and Annan meant, however, is not a “drug free” world but a world free of the drugs that had been declared illicit by the conventions. The international regime, as it has been said, divided the substances into two categories: the permitted ones and the illicit ones.<sup>201</sup> The goal, according to the mentioned narratives, is to have a world in which people only consume the first substances.<sup>202</sup> They argue the second ones are evil, cause harm, bring pain, are extremely addictive, and kill you.<sup>203</sup> In direct contrast, the first ones can bring a person joy, add to productivity, and are sometimes healthy to consume.<sup>204</sup>

#### *D. The Division, the Images, and the Characters of the War on Drugs*

The examples provided in the introduction of this paper show that there is a negative image of specific psychoactive substances and that their users are criticized, condemned, and stigmatized due to the negative images associated with the substances.<sup>205</sup> At the same time, there is a positive (or at least less negative) conception of other substances, and their users are not judged by the same bar as the consumers of the substances with a negative image.<sup>206</sup> The substances with negative images are the ones that the international drug control system has prohibited and the ones with the positive image are the legal ones to consume.<sup>207</sup> The perception of each substance and its placement in the good or bad category, as demonstrated above, have varied over time.<sup>208</sup> These perceptions, of course, have not only

199. U.N. International Drug Control Programme, *A Drug-Free World. We Can Do It*, UNDCP(02)/D794 (June 1998).

200. U.N. GAOR, 20th Sess., 1st plen. mtg. at 4, U.N. Doc. A/S-20/PV.1 (June 8, 1998) (Statement by the Secretary-General).

201. BANCROFT, *supra* note 61, at 117.

202. *Id.* at 119.

203. *See supra* Part I.B.

204. *See supra* Part I.B.

205. *See supra* Introduction.

206. *See supra* Introduction.

207. *See supra* Introduction.

208. *See supra* Part I.C.

been influenced by the law and the law's underlying narratives; culture, the media, religion, moral entrepreneurs, and others have also played an important role in creating beliefs and shaping people's perceptions about psychoactive substances.<sup>209</sup>

At this point, I would like to make a clarification. I am not arguing that everybody in the world has the same perception of each and every psychoactive substance. There are widely varied opinions about every substance on the individual level, which depends on each person's experience and the society in which he or she lives. However, it is impossible to deny that legal drugs generally have a better image than illegal ones; alcohol, coffee, tobacco, or other drugs to cure pain are generally viewed more positively than substances such as heroin, methamphetamines, and cocaine.<sup>210</sup> Legal substances are not only better tolerated: they are in many cases broadly promoted and embraced. It is undeniable, for example, that at a wedding or a dinner, in a great majority of countries, alcohol may be served (or tobacco may be consumed) without fear of repercussions for the host.<sup>211</sup> On the contrary, it is expected from people to provide that substance on such occasions.<sup>212</sup> In contrast, a person offering methamphetamines at these occasions would typically be severely condemned. The same happens with people that drink coffee in the streets or at work, something that is done by millions of people every day, who are neither noticed for that nor have any consequence for consuming that substance in public. That does not happen with, for instance, cannabis or cocaine. A person using those drugs publicly in the streets or at work will be generally judged, rejected, criticized, and probably fired if it is consumed in the workplace.

As previously noted, the law and the narratives that underlie it have played an important role in shaping the aforementioned perceptions.<sup>213</sup> By declaring certain substances illegal and criminalizing their production, traffic, and consumption, the law has molded the view people have of those substances.<sup>214</sup> It is not a coincidence that before the internationalization of drug prohibitions, the perception of the current illicit drugs varied depending on the country (and even within countries), while during the second half of the 20th century there was a homogenization worldwide on the views of specific illegal substances.<sup>215</sup> The main narrative established illicit drugs as

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209. *See supra* Part I.

210. *See* BANCROFT, *supra* note 61, at 119.

211. *See supra* Part I.

212. *See, e.g.,* *Wedding Drinking Traditions From Around the World*, DAILY MEAL, (Jun. 16, 2014, 11:14 AM), <https://www.thedaily meal.com/drink/wedding-drinking-traditions-around-world-slideshow>

213. BANCROFT, *supra* note 61, at 13.

214. *Id.* at 114.

215. *See supra* Part I.



evil.<sup>216</sup> Stemming from this, it has been said that these substances are harmful, extremely dangerous, unhealthy, and highly addictive once a person uses a drug for the first time; can drive a person crazy or ruin a person's life; may destroy families and communities; fuel crime; damage and kill people; bring poverty; and their use is always deemed negative.<sup>217</sup>

Also, narratives have been constructed about specific drugs.<sup>218</sup> It has been said, for example, that cannabis is a gateway drug which leads to addiction and to the consumption of other substances, such as heroin and cocaine.<sup>219</sup> It is also a common belief that heroin is a dangerous and extremely addictive drug.<sup>220</sup>

Additionally, the users of illegal substances have been negatively labeled, stigmatized, and faced discrimination.<sup>221</sup> Among other things, it has been said that illegal drug consumers suffer from substance use disorders; have many problems; are dirty, immoral, losers, degenerates, thieves, killers, criminals, unproductive, lazy, dangerous, and sick; need treatment; do not contribute to society; and commit crimes because of their drug consumption.<sup>222</sup> There is a recurring belief that when a person is under the effect of an illicit substance, he or she loses control over his or her mind, regardless of the method used to ingest the drug or the quantity consumed.<sup>223</sup> Many people think that a person who uses illicit drugs can commit horrible crimes or say nonsensical things because of the substance.<sup>224</sup> These people seem to feel it is the substance, and not the person, that leads to the crime or stupidity.<sup>225</sup> There are many day-to-day examples of these beliefs. On Twitter, for instance, people frequently ask questions like, “were you on drugs when you wrote such nonsense?” A recent case also helps to illustrate some of the preconceptions people have regarding illicit drug users.<sup>226</sup> After raping and killing a 7-year-old child, the perpetrator decided to consume cocaine to make it appear as though ingesting this substance was the reason

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216. BANCROFT, *supra* note 61, at 13.

217. *See supra* Part I.C.

218. GROWN-UPS, *supra* note 73, at 8.

219. *Id.*

220. *See id.*

221. *Substance Use More Stigmatized Than Smoking Cigarettes and Obesity*, RECOVERY RES. INST., <https://www.recoveryanswers.org/research-post/substance-use-is-more-stigmatized-than-both-smoking-obesity/> (last visited Sept. 18, 2022).

222. *See supra* Part I.C.

223. *See* ANSLINGER & OURSLER, *supra* note 183, at 4.

224. U.S. DEP'T OF JUST., FACT SHEET: DRUG-RELATED CRIME (1994), <https://bjs.ojp.gov/content/pub/pdf/DRRC.PDF>.

225. *Id.*

226. *See generally* Daniel Emilio Mendoza, *Uribe Noguera, el Club El Nogal y la Sociopatía Institucional*, VICE (Dec. 13, 2016), <https://www.vice.com/es/article/z4nw58/uribe-noguera-el-club-el-nogal-y-la-sociopata-institucional>.

he committed those crimes.<sup>227</sup> The media, which actively covered the case, stated that the perpetrator and his family “could be sleeping softly if it could be proven that cocaine was what made him crazy.”<sup>228</sup> The issue is that he did not consume before committing the crime.<sup>229</sup> The first lines he had were at least one hour after the death of the minor.<sup>230</sup> Thus, the excuse that he did it because cocaine made him crazy does not apply in this case.<sup>231</sup> As it can be seen, cocaine is seen both by the perpetrator and the media as a substance that drives you insane and crazy, providing a reason to commit any crime.<sup>232</sup>

Legal drugs have been privileged by the law and these narratives. Their consumption has not been proscribed; and, though in some cases it is regulated, as is the case with tobacco, alcohol, and certain opioids, they are widely available and even promoted, as it was described at the beginning of this paper.<sup>233</sup> Their consumption is tolerable and important for many people and cultures.<sup>234</sup> Their presence is fundamental on many occasions, such as the case of alcohol and coffee served at weddings, dinners, new year’s eve parties, birthdays, concerts, art openings, and other special events.<sup>235</sup> The substances are an essential part of religious ceremonies as well, such as in Catholic masses, where there is wine for the priest.<sup>236</sup> Alcohol, coffee, and tobacco are sold in almost every supermarket all around the world, with the exception of the countries ruled by Shariah Law.<sup>237</sup> Likewise, they are sold and consumed in restaurants and bars. Also, there are certain drugs that are provided to treat or decrease pain, both with a medical prescription or without it, like opioids and other types of painkillers that are found in pharmacies worldwide.<sup>238</sup> Generally, a person would not receive any reproach if they took any of those legal substances to cure pain. Quite the opposite, it is expected for them to take the painkillers, and there are usually not concerns of that person becoming addicted to them.

It would be unfair, however, to say that all legal drugs have only been praised and promoted.<sup>239</sup> Lately, there has been an effort to reduce part of

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227. *Fue un “Momento de Locura Causado por las Drogas”: Arquitecto Rafael Uribe Confiesa el Crimen de la Niña Colombiana Yuliana Samboni ante el Juez y Espera Sentencia*, BBC MUNDO (Jan. 12, 2017), <https://www.bbc.com/mundo/noticias-america-latina-38592333>.

228. Mendoza, *supra* note 226.

229. *Id.*

230. *Id.*

231. *Id.*

232. *See id.*

233. *See supra* Introduction.

234. *See supra* Introduction.

235. *See supra* Part I.

236. *The Order of Mass*, CATH. RESOURCES, <https://catholic-resources.org/ChurchDocs/Mass-RM1.htm> (last visited Sept. 18, 2022).

237. Khan, *supra* note 90.

238. *See* BANCROFT, *supra* note 61, at 118.

239. *See id.* at 118-19.

their consumption, demonstrated by the different campaigns against tobacco use, such as the enactment of laws requiring companies to put on cigarette packages explicit content of the possible harms of smoking.<sup>240</sup> Many countries have also issued restrictions on tobacco use in certain places such as airplanes, public transportation, bars, and restaurants.<sup>241</sup> However, despite these efforts and the fact that many people have been deterred from smoking or consuming alcohol, these substances are still not seen as being as bad and dangerous as the illicit ones.<sup>242</sup> Moreover, their users are not generally stigmatized since their consumption is considered normal.<sup>243</sup>

People also tend to view legal substances as less addictive.<sup>244</sup> No one would argue that a person would certainly become an addict to alcohol if he or she drinks one beer or a shot of vodka, nor to painkillers if he takes them to treat post-operative pain or for a bad headache. It is, thus, believed that legal substances are not as addictive as the illicit ones.<sup>245</sup>

The characterization between substances as right or wrong to produce, trade or use, and the images that this facilitates, are not the only things that drug prohibitionist policies have helped to create and shape. The prohibition on drugs has also formed, using Makau Mutua's words, "a damning metaphor."<sup>246</sup> Though Mutua uses this metaphor to show how the human rights narrative has created three subjects, it is also possible to extrapolate these characters to the narrative surrounding the prohibition of drugs.<sup>247</sup> For Mutua, the human rights discourse

depicts an epochal contest pitting savages . . . against victims and saviors . . . . The main authors of the human rights discourse, including the United Nations, Western states, international non-governmental organizations (INGOs), and senior Western academics, constructed this three-dimensional prism. This rendering

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240. *Cigarette Labeling and Health Warning Requirements*, U.S. FOOD & DRUG ADMIN., <https://www.fda.gov/tobacco-products/labeling-and-warning-statements-tobacco-products/cigarette-labeling-and-health-warning-requirements> (last updated Aug. 25, 2021).

241. See, e.g., Irene Ogradnik, *5 Countries With Strict Smoking Bans*, GLOBAL NEWS, (July 30, 2012, 9:44 AM), <https://globalnews.ca/news/271458/5-countries-with-strict-smoking-bans/>; *The Role of the Public in Changing Norms: Smoke-free Beaches in Spain*, WHO (May. 30, 2022), <https://www.who.int/europe/news/item/30-05-2022-the-role-of-the-public-in-changing-norms—smoke-free-beaches-in-spain>.

242. See BANCROFT, *supra* note 61, at 119.

243. See ANDREAS & NADELMANN, *supra* note 84, at 45.

244. See BANCROFT, *supra* note 61, at 118-19.

245. See *id.*

246. Makau Mutua, *Savages, Victims, and Saviors: The Metaphor of Human Rights*, 42 HARV. INT'L L.J. 201 (2001).

247. *Id.*

of the human rights corpus and its discourse is . . . [a] construction that pits good against evil.<sup>248</sup>

In the same sense, the prohibition of drugs is marked by a metaphor that depicts three characters.<sup>249</sup> First, there is the monster, which is usually called the enemy.<sup>250</sup> Against him, there is a war. This enemy has not a clear face, but it is composed of different things and people: illicit drugs, which are certain substances that hijack people's brains; and drug dealers and producers, who are demons and horrible criminals that threaten and destroy children's and people's lives, families, communities, and countries. The second character is the savior, who is represented by the United Nations drug control systems, the governments of the different countries making up those systems, and those countries' drug enforcement agencies.<sup>251</sup> These second characters present themselves as having sufficient knowledge to save and keep the victims safe. They have the role, according to the narrative, to protect the innocent from being attacked by the enemy. The third character is the victim: the user or potential consumer.<sup>252</sup> This is the innocent whose brain is, or could be, hijacked by the horrible monster. They cannot make their own decisions because the substances do not allow them to do so or because they do not have the knowledge to understand the destructiveness and addictiveness of the enemy. Some of these third characters are nothing more than abstract ideas, while the others are just fragile people in society who can be potential targets.

The victims, in some situations and depending on the substance they consumed, have been subject to discrimination and stigmatization.<sup>253</sup> The clearest example is the narrative used with the victims of the two major drug epidemics in the United States: opioids and crack cocaine.<sup>254</sup> Subject to whether the substance was legal or illegal and the race of the consumers, the way in which the addicts have been depicted has varied drastically.<sup>255</sup> In the opioid epidemic, the narrative has been to portray the victims as naïve and helpless consumers; people that became addicted to the drug due to medical prescriptions, who are harmless and not dangerous – victims of a horrible system of economic incentives.<sup>256</sup> On the contrary, since the 1980s, myths

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248. *Id.* at 201-02.

249. *Id.*

250. *Id.* at 202.

251. *See* Mutua, *supra* note 246, at 204.

252. *See id.* at 203.

253. *See* Deborah J. Vagins & Jesselyn McCurdy, *Cracks in the System: Twenty Years of the Unjust Federal Crack Cocaine Law*, AM. C.L. UNION 2 (Oct. 2006), [https://www.aclu.org/sites/default/files/field\\_document/cracksinsystem\\_20061025.pdf](https://www.aclu.org/sites/default/files/field_document/cracksinsystem_20061025.pdf).

254. *See* GROWN-UPS, *supra* note 73, at 19.

255. *See* Vagins & McCurdy, *supra* note 253, at 1.

256. *See* GROWN-UPS, *supra* note 73, at 230.

have been created regarding the victims of the crack epidemic.<sup>257</sup> Instead of being described as a victim, the narratives shaped a monster: the *crackhead*. These addicts have been described as dangerous and violent people.<sup>258</sup> And when addicts were women, it was even said they did not have maternal instincts and would be prone to abandoning their children.<sup>259</sup>

In sum, the international drug control system and the mentioned narratives have contributed to creating certain beliefs and images regarding drugs. On the one hand, we find legal substances, whose consumption, production, and use are tolerated, seen as normal and not that dangerous, and not thought to be terribly addictive. The users of these types of substances can consume the drugs or beverages without any reproach, and there are few (e.g., age requirements to purchase alcohol or tobacco) to no (e.g., caffeine has no limitations) limits on their consumption. They can be used either to cure pain, for recreational purposes or to get energy. On the other hand, there are illicit substances that are evil; they are considered bad, dangerous, highly addictive, violence-inducing, and the cause of social and economic ruin.<sup>260</sup> Their consumers are demonized and stigmatized just for using them, independent of the amount of substance they consume or the method by which they consume them.<sup>261</sup> Additionally, the law and its narratives have contributed to the formation of three subjects: the monster, the victim, and the savior.

## II. THE THEORIES BEHIND: THE LAW AS NEUTRAL AND SCIENTIFIC

It is difficult to measure the exact impact of the law and its underlying narratives that give rise to the perceptions mentioned before. Nonetheless, it is indubitable that the legal order and its narratives have played an important role in shaping what we think about legal and illegal substances.<sup>262</sup> It has not been the only factor, of course; as pointed out before, the media, the arts, other narratives, and even personal experiences have also contributed to forming these beliefs.<sup>263</sup> But the law has played, without a doubt, a major role in influencing the public imagination about psychoactive substances.<sup>264</sup>

Some characteristics of the law, such as the symbolic effect that was mentioned before help us understand why the law has been such a powerful

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257. Vagins & McCurdy, *supra* note 253, at 5.

258. *Id.*

259. *Id.* at 4.

260. BANCROFT, *supra* note 61, at 17-18.

261. *See id.* at 17.

262. MARES, *supra* note 83, at 36-37.

263. Anne Katrin Schlag, *Percentages of Problem Drug Use and Their Implications for Policy Making: A Review of the Literature*, 6 DRUG SCI., POL'Y & L. 1 (2020).

264. MARES, *supra* note 83, at 37.

tool in influencing people's thoughts.<sup>265</sup> Following the same line as Robert Cover, Mauricio García Villegas argues that the law can impact society even before the law is enforced.<sup>266</sup> This could be explained, according to this author, because of the images that the law generates, the beliefs, representations, or images that are associated with legal discourse, the prestige of the legal system, and the feelings that arise in those that are impacted by it.<sup>267</sup> This is what is called "the symbolic function" – a power that the law possesses that can be used to mobilize citizens toward an idea or image.<sup>268</sup>

There are certain beliefs about the law that help to potentiate this symbolic effect.<sup>269</sup> The understanding of the law as something rational, objective, neutral, just, based on science, and done for the benefit of humankind has facilitated the expansion of the war on drugs narrative, the creation of the mentioned ideas about the substances, and the division between the "right and wrong" drugs to produce, trade and consume.<sup>270</sup> These dogmas have permeated people's minds through a process by which it has been legitimized: initially, the creation of law at the state and territorial level, then by the law made by and for the international community.<sup>271</sup> The current belief in the rightness of the national law can be traced to 18th-century political philosophy.<sup>272</sup> Ideas shaped during the Enlightenment and the French Revolution, and the process of what Max Webber calls the rationalization of the law, helped to shape perception of the law as something rational, complete, just, and neutral.<sup>273</sup>

Specifically, Jean Jacques Rousseau was one of the most well-known developers of these ideas.<sup>274</sup> According to Rousseau, people united through a representative form of government act as the sovereign, which is the only legitimate body enacting the law; thus, laws produced by such a governing body can only be good and just since no rational person would hurt herself or

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265. See Cover, *supra* note 1, at 4-5.

266. Mauricio García Villegas, *La Eficacia Simbólica del Derecho. Examen de Situaciones Colombianas*, 32 DROIT ET SOCIÉTÉ 234 (1996).

267. *Id.*

268. *Id.*

269. See generally MAX WEBER, *ECONOMÍA Y SOCIEDAD: ESBOZO DE SOCIOLOGÍA COMPRENSIVA* (2d ed. 1964).

270. See Duane C. McBride et al., *The Drugs-Crime Wars: Past, Present, and Future Directions in Theory, Policy, and Program Interventions*, in U.S. DEP'T OF JUST., *TOWARD A DRUGS AND CRIME RESEARCH AGENDA FOR THE 21ST CENTURY* 97, 109 (2001).

271. WILLIAM R. SLOMANSON, *FUNDAMENTAL PERSPECTIVES ON INTERNATIONAL LAW* 4 (6th ed. 2011).

272. See generally WEBER, *supra* note 269.

273. *Id.* at 24-25.

274. J. J. ROUSSEAU, *A TREATISE ON THE SOCIAL COMPACT; OR THE PRINCIPLES OF POLITICAL LAW* 3 (1761).

the parts that form her.<sup>275</sup> It could happen, Rousseau argued, that individual interests contradict the general will.<sup>276</sup> For Rousseau, however, these individual interests are not necessarily beneficial for the community.<sup>277</sup> Only the interests aligned with the general will of a majority serve to profit society as a whole.<sup>278</sup> If the majority decided it, it is because it is good; if someone thinks the opposite, he or she is wrong.<sup>279</sup>

The legislature in republics, as it can be seen, is conceived as a rational body that aims for the well-being of society.<sup>280</sup> This is, in fact, the purpose of governments directed by the general will: to pursue the welfare of the whole.<sup>281</sup> And this objective can be easily achieved in this type of government since, as said, the legislator represents the whole.<sup>282</sup> The way in which this political body expresses itself is through laws, which are always general, abstract, and a result of rational decisions.<sup>283</sup>

In addition to these ideas stemming from the different revolutions during the 18th and 19th centuries and the changes in the institutional design of governments, another process added to the construction of the belief that the law is something right and rational that ensures the welfare of a state's citizens: the codification process and the rationalization of the law.<sup>284</sup> The appearance of civil codes in several countries around Europe, America, Africa, Asia, and Oceania that aimed to organize the disorder of the existing laws gave the perception that the law was good and that it could solve all the conflicts that arise in social life in a beneficial way.<sup>285</sup> But most importantly, the codification process gave the law a perception of something scientific.<sup>286</sup> The rationalization of the law did not occur only through the adoption of civil codes.<sup>287</sup> As Weber explains, common law systems also adopted methods for organizing and systematizing the law, which aimed to make it rational and scientific.<sup>288</sup> This molded an extreme faith in the law and a belief in the law as something sacred, a formalist view of the holiness of the law.<sup>289</sup>

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275. *Id.*

276. *Id.*

277. *Id.* at 3-4.

278. *Id.* at 3.

279. ROUSSEAU, *supra* note 274, at 3-4.

280. *Id.* at 3.

281. *Id.* at 56.

282. *Id.* at 56-57.

283. *Id.* at 56.

284. WEBER, *supra* note 269, at 24-25.

285. *Id.*

286. *Id.* at 612-38.

287. *Id.* at 659.

288. *Id.*

289. WEBER, *supra* note 269, at 659.

All of these processes and ideas have, as Bernard Harcourt has called it, “naturaliz[ed]” most of the laws produced by modern states.<sup>290</sup> Namely, the processes have contributed to shaping the perception of the law as something inevitable and good for the well-being of the community.<sup>291</sup> Moreover, the rise of the administrative state, in which public agencies were created to make the state more formulaic, helped to build a perception of certain areas of the law that are more technical and grounded on scientific evidence rather than ideological reasons.<sup>292</sup> Among others, this is the case of an agency created to protect consumers’ rights and health: the Food and Drug Administration (FDA) in the United States.<sup>293</sup> If a specific substance is authorized by such organizations, people usually trust that the product is safe to consume.<sup>294</sup> On the contrary, if a substance is forbidden, it is because it can cause a lot of harm or is dangerous.<sup>295</sup> There is, thus, a perception of such agencies as technical bodies that protect citizens’ health and well-being.<sup>296</sup> The decisions they make are believed to be based on science and not permeated by any interest or ideology.<sup>297</sup>

The legitimization of the legislator and the law, and the belief that such actors are neutral, just, and rational on the domestic level were also accompanied and followed by faith in international law as a problem solver during part of the 20th century.<sup>298</sup> After the end of World War II and with the creation of the United Nations, international law started to be seen, again, as the best tool to solve problems that affected different nations and required international cooperation for resolution.<sup>299</sup> The narrative that was developed with this new system presented international law as the panacea for humanity.<sup>300</sup> It was the body of law in charge of preserving peace around the world, protecting human rights, promoting development, ending poverty, and assuring the well-being of people.<sup>301</sup> The laws produced by the international system were labeled as the ones that promoted good causes and protected

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290. BERNARD E. HARCOURT, *THE ILLUSION OF FREE MARKETS: PUNISHMENT AND THE MYTH OF NATURAL ORDER* 31-32 (Harv. Univ. Press 2011). Though Harcourt uses the concept for arguing the naturalization of the idea of free markets, it is the same phenomenon that has happened with the law.

291. *See generally id.*

292. *See* Ralph S. Tyler, *The Goals of FDA Regulation and the Challenges of Meeting Them*, 22 *HEALTH MATRIX* 423 (2013).

293. *Id.* at 424.

294. *Id.*

295. *Id.*

296. *Id.* at 424-25.

297. Tyler, *supra* note 292, at 424-25.

298. SLOMANSON, *supra* note 271, at 138.

299. *Id.* at 139.

300. *Id.* at 138.

301. *Id.*



countries from evil.<sup>302</sup> Within those laws lies the current international drug control system.<sup>303</sup>

The foregoing narratives, ideas, and processes have all influenced the dominant belief about the rationality of the law and the conviction that it is determined by history and human nature, based on science, and made for the well-being of the citizens of a nation or humankind. And all of these dogmas provide an architecture to help to sustain the narratives, images, and ideas that many people have about psychoactive substances. With the support of these beliefs about the law it was possible to, as Robert Gordon calls it, “manufactur[e] necessity.”<sup>304</sup> This happens when “[people] build structures, then act as if (and genuinely come to believe that) the structures they have built are determined by history, human nature, [and] economic law.”<sup>305</sup> Amidst these structures that have been built is the drug control system.<sup>306</sup>

The law, nevertheless, is not as rational, natural, and inevitable as is believed.<sup>307</sup> Nor was the War on Drugs.<sup>308</sup> Critical theories of the law have challenged these assumptions through different methods such as distributional analysis, deconstruction, and empirical studies, among others.<sup>309</sup> Those theories have shown: (i) how laws that seemed and were presented as being neutral, rational, obvious, based on science, and inevitable were in fact distributing resources, favoring certain elites or interests, ideologically grounded, and totally replaceable;<sup>310</sup> (ii) that there are always winners and losers when the law is enforced;<sup>311</sup> (iii) that the law has a strong social and political content;<sup>312</sup> (iv) the injustices produced by certain legal regimes;<sup>313</sup> and (v) the law often produces more chaos and complexity than solutions.<sup>314</sup>

302. *Id.*

303. SLOMANSON, *supra* note 271, at 149.

304. Robert W. Gordon, *Some Critical Theories of Law and Their Critics*, in *THE POLITICS OF LAW: A PROGRESSIVE CRITIQUE* 641, 650 (David Kairys ed., 3d ed. 1998).

305. *Id.*

306. *See generally id.*

307. Duncan Kennedy, *Form and Substance in Private Law Adjudication*, 89 HARV. L. REV. 1685 (1976) [hereinafter *Form and Substance*].

308. MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* 54 (Revised ed. 2011).

309. *See, e.g.*, Jorge L. Esquirol, *Making the Critical Moves: A Top Ten in Progressive Legal Scholarship*, 92 U. COLO. L. REV. 1080, 1125 (2021).

310. *Form and Substance*, *supra* note 307, at 1776.

311. *See, e.g.*, Duncan Kennedy, *Sexual Abuse, Sexy Dressing and the Eroticization of Domination*, 26 NEW ENG. L. REV. 1309, 1323-24; Ezra Rosser, *The Ambition and Transformative Potential of Progressive Property*, 101 CALIF. L. REV. 107, 133 (2013).

312. DUNCAN KENNEDY, *A CRITIQUE OF ADJUDICATION* 1 (1998).

313. *See, e.g.*, Paul Butler, *The System Is Working the Way It Is Supposed to: The Limits of Criminal Justice Reform*, 2019 FREEDOM CTR. J. 75, 130 (2019) (analyzing the case of the criminal justice system).

314. Paul D. Butler, *Poor People Lose: Gideon and the Critique of Rights*, 122 YALE L. J. 2178, 2188 (2013).

As described above, the main narrative has presented the international drug control system as something necessary, rational, and scientific – a legal regime to protect humanity from a great evil that threatens our existence.<sup>315</sup> This has contributed to the creation of images and perceptions about the different psychoactive substances and different characters.<sup>316</sup> Those perceptions and images have not always been the same, and the changes related to them are, in some part, a consequence of the law and the narratives that give meaning to them.<sup>317</sup> This has been possible, in great part, due to a traditional understanding of the law and the symbolic effect that it has.<sup>318</sup> However, as I will argue in the following sections, this legal regime is not as necessary and based on evidence as has been claimed.<sup>319</sup> On the contrary, the perceptions shaped are sometimes misconceptions that form even more complexity, cause a lot of harm, and deprive people of benefits.<sup>320</sup>

### III. CHALLENGING THE IMAGES: HARM, ADDICTION, AND THE LACK OF NEUTRALITY OF DRUG LAWS

The image that the main narrative sustains about illicit substances is that they are evil and forbidden because of their evil nature.<sup>321</sup> They are evil, according to this discourse, because they are dangerous, tremendously addictive, cause extreme harm, and fuel crime, among other things previously mentioned.<sup>322</sup> Additionally, illicit drug users have been seen as dysfunctional members of society – addicts who do not produce any good, are problematic and dangerous, and cause a lot of pain to their families and communities.<sup>323</sup> There is also an image of the international drug control regime as something objective, natural, determined, just, scientific, and neutral.<sup>324</sup>

On the other hand, legal substances have been granted a higher status.<sup>325</sup> They are trusted when consumed since they are authorized by states, not considered as addictive or harmful, and sometimes seen as beneficial and good.<sup>326</sup> The users of such substances are generally perceived as functional, productive members of society who just want to amuse themselves, be more efficient, or cure certain pain.<sup>327</sup> These consumers are not discriminated

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315. ANDREAS & NADELMANN, *supra* note 84, at 21.

316. *Id.* at 37-38.

317. *Id.* at 38-39.

318. *Id.* at 40-41.

319. *See infra* Part III.

320. ANDREAS & NADELMANN, *supra* note 84, at 42.

321. *Id.* at 228.

322. *Id.* at 40.

323. *Id.* at 41.

324. *Id.* at 38; BANCROFT, *supra* note 61, at 118-19.

325. ANDREAS & NADELMANN, *supra* note 84, at 44-45.

326. *Id.* at 45.

327. *Id.*

against or stigmatized when they consume the substances as long as their use is not problematic; however, even when it is, they still may not face stigma like users of illicit substances do.<sup>328</sup>

The question that this section aims to respond to is whether the images that we have of the international drug control system, including illicit and legal substances and their users, correspond with what the evidence shows. As I will argue below, one thing is the psychoactive substances per se, their users, and the international drug control system, whereas the images that have been constructed about them are something different. The image and the perceptions that people have, as it has been argued, are constructions that the law and its narratives have helped shape.<sup>329</sup> Those images, therefore, do not necessarily correspond with scientific evidence or other realities about the substances.<sup>330</sup> It happens, as Jean Luc Nancy describes, that the images are something different from what the “thing” actually is.<sup>331</sup> According to him, an image is something that is “different from the thing.”<sup>332</sup> “The image is a thing that is not the thing: it distinguishes itself from it, essentially.”<sup>333</sup>

*A. The International Drug Control System: Neutral and Based in Science?*

The system that divided psychoactive substances into two categories, licit and illicit, and enabled the creation of the perceptions about drugs due to the way it described them, is not as neutral, objective, scientific, and good for humankind as has been presented.<sup>334</sup> The decisions about whether to forbid a substance or to include it in the schedule of the most dangerous ones did not follow just a science-based approach but instead were mainly based on political factors.<sup>335</sup> Since the early prohibitions in the United States, as mentioned before, the pattern to be followed was to forbid a substance for the association it had with certain disliked minorities, as it was the case with the Chinese and smoked opium.<sup>336</sup> Then, other substances were included that were associated with the African American community and the left hippie communities.<sup>337</sup> As Michelle Alexander establishes in her book, *The New*

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328. *Id.*

329. *See supra* Part I.B.

330. *See generally* JEAN LUC-NANCY, *THE GROUND OF THE IMAGE* (John D. Caputo ed., Jeff Fort trans., 2005).

331. *Id.* at 2.

332. *Id.*

333. *Id.*

334. ANDREAS & NADELMANN, *supra* note 84, at 247.

335. *Id.*; BANCROFT, *supra* note 61, at 118-19.

336. ANDREAS & NADELMANN, *supra* note 84, at 41.

337. *See* Dan Baum, *Legalize It All: How to Win the War on Drugs*, HARPER'S MAG., April 2016, at 22.

*Jim Crow*, the “War on Drugs” was created by the white majority as a tool to control, segregate, and discriminate against African American people after the achievements of the civil rights movement.<sup>338</sup> This was confirmed by John Ehrlichman, Assistant to President Nixon for Domestic Affairs, who admitted that

[t]he Nixon campaign in 1968, and the Nixon White House after that, had two enemies: the antiwar left and black people. You understand what I’m saying? We knew we couldn’t make it illegal to be either against the war or black, but by getting the public to associate the hippies with marijuana and blacks with heroin, and then criminalizing both heavily, we could disrupt those communities. We could arrest their leaders, raid their homes, break up their meetings, and vilify them night after night on the evening news. Did we know we were lying about the drugs? Of course we did.<sup>339</sup>

The decision about which substances would remain legal also followed the preference of North American and European elites.<sup>340</sup> At the end of the day, the substances preferred by the social elite remained lawful, socially acceptable, and consumable in the United States and the majority of the European countries.<sup>341</sup> Substances that the elite did not prefer, including many common in other countries, did not receive such preferential treatment.<sup>342</sup> Alcohol, tobacco, and caffeine are not necessarily harmless, but their consumption is (and was) socially approved in different parts of the world, especially within great powers like some European nations, who blocked the attempts at prohibiting them.<sup>343</sup> As pointed out by Andreas and Nadelmann, the nature of the prohibitionist drug regime

reflected the dominance of the United States and Europe in establishing global norms concerning the selection and appropriate uses of psychoactive substances. Some Asian states, for instance, might have opted for a different global regime that legitimized the use of opium, some African and Asian states for a regime legitimizing cannabis, many Muslim states for a regime prohibiting

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338. ALEXANDER, *supra* note 308, at 54.

339. Baum, *supra* note 337, at 22.

340. See ANDREAS & NADELMANN, *supra* note 84, at 44.

341. *See id.*

342. *See id.* at 45.

343. *See id.* at 44-45.

alcohol, and some Latin American states for a regime that sanctioned coca.<sup>344</sup>

As it can be seen, the first substances to be controlled by the regime, as well as the ones subsequently added and now included in the current prohibitionist regime, were not necessarily proscribed due to their potential harms, but due to their acceptability in the Western world.<sup>345</sup> The supporters of the prohibitionist regime would argue, nonetheless, that the socially accepted substances of the Western world coincide with the ones that are not as dangerous or addictive, and that is, therefore, the reason why they were not proscribed.<sup>346</sup> Is this true? Are illicit psychoactive substances more harmful and addictive than the legal ones?

### B. Harm

Different studies have challenged the classification of substances used in the UN conventions as well as the methodology behind that classification.<sup>347</sup> It has been said that the first schedule of the 1961 convention made inappropriate decisions, such as including cannabis and coca leaves as two of the most dangerous substances.<sup>348</sup> Additionally, the schedules have been accused of a lack of transparency and for not having followed the recommendations given by the World Health Organization.<sup>349</sup> According to Nutt, King, Saulsbury and Blakemore, some of the most well-known scholars on the subject, “the methodology and processes underlying classification systems are generally neither specified nor transparent, which reduces confidence in their accuracy and undermines health education messages.”<sup>350</sup> As a consequence, these authors developed a scale of the harm of the most commonly-used drugs.<sup>351</sup> In this scale, they included licit and illicit substances.<sup>352</sup>

In the mentioned study, the researchers assessed the harm of drugs based on scientific evidence.<sup>353</sup> To determine how damaging each specific drug can be, they divided harm into three main factors: “the physical harm to the individual user caused by the drug; the tendency of the drug to induce

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344. *See id.* at 45.

345. *See* ANDREAS & NADELMANN, *supra* note 84, at 45.

346. *See id.*

347. David Nutt et al., *Development of a Rational Scale to Assess the Harm of Drugs of Potential Misuse*, 369 LANCET 1047 (2007) [hereinafter *Development*].

348. *See id.*; BANCROFT, *supra* note 61, at 118-19; ANDREAS & NADELMANN, *supra* note 84, at 38.

349. *Development*, *supra* note 347, at 1047.

350. *Id.*

351. *Id.*

352. *Id.*

353. *Id.*

dependence; and the effect of drug use on families, communities, and society.”<sup>354</sup> The first category, physical harm, consists of the propensity of a drug to damage a person’s organs or systems.<sup>355</sup> This assessment takes into consideration the acute toxicity of the substance and the likelihood that it has to produce health problems in the future.<sup>356</sup> There are some factors, such as the effect of the substance on certain physiological functions like the cardiac and the respiratory systems, that are more determinant to considering the substance harmful, since an impact on those functions can be more grave for a person’s health than others.<sup>357</sup> A second important factor for assessing physical harm is, according to the authors, the way in which the drug is consumed, since “[d]rugs that can be taken intravenously—eg, heroin—carry a high risk of causing sudden death from respiratory depression, and therefore score highly on any metric of acute harm.”<sup>358</sup> The propensity for a person to die or become ill as a consequence of chronic use is also an important variable for calculating the harm of a substance.<sup>359</sup> In sum, and in the authors’ words:

Three separate facets of physical harm can be identified. First, acute physical harm—ie, the immediate effects (eg, respiratory depression with opioids, acute cardiac crises with cocaine, and fatal poisonings). The acute toxicity of drugs is often measured by assessing the ratio of lethal dose to usual or therapeutic dose. Such data are available for many of the drugs we assess here. Second, chronic physical harm—ie, the health consequences of repeated use (eg, psychosis with stimulants, possible lung disease with cannabis). Finally, there are specific problems associated with intravenous drug use. The route of administration is relevant not only to acute toxicity but also to so-called secondary harms. For instance, administration of drugs by the intravenous route can lead to the spread of blood-borne viruses such as hepatitis viruses and HIV, which have huge health implications for the individual and society.<sup>360</sup>

The second main category, namely dependence, is determined by the degree of pleasure that the drug produces and its propensity to cause repeated use.<sup>361</sup> There are two components used in the study to establish the degree of pleasure of each substance: first, the instant effect, which is called in

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354. *Development, supra* note 347, at 1047.

355. *Id.*

356. *Id.*

357. *Id.*

358. *Id.*

359. *Development, supra* note 347, at 1047-48.

360. *Id.* at 1048.

361. *Id.*

colloquial terms “the rush”; and second, the extended feeling over several hours after the rush, also known as “the high.”<sup>362</sup>

The faster the drug enters the brain the stronger the rush, which is why there is a drive to formulate street drugs in ways that allow them to be injected intravenously or smoked: in both cases, effects on the brain can occur within 30 seconds. . . . Taking the same drugs by mouth, so that they are only slowly absorbed into the body, generally has a less powerful pleasurable effect, although it can be longer lasting.<sup>363</sup>

When assessing the propensity of a substance to encourage repeated use, the authors observe different variables.<sup>364</sup> First, “the special nature of drug experiences,” which exists in the methods in which the substance is usually consumed.<sup>365</sup> For instance, there are certain drugs that are only consumed in certain rituals that do not happen very often.<sup>366</sup> Therefore, their consumption is infrequent, and the substances are less likely to produce dependent behaviors.<sup>367</sup> The authors also observe if there is an increasing tolerance to the substance developed by the person.<sup>368</sup> The more tolerance that exists, the higher the dose required for obtaining the same effects.<sup>369</sup> Third, the authors study the withdrawal consequences that substances have.<sup>370</sup> Among other things, when stopping the consumption of certain substances, a person can start feeling anxious, have diarrhea, and they can also experience difficulties sleeping, which make quitting harder.<sup>371</sup> Fourth, the authors look at the grade of desire or craving that a substance generates;<sup>372</sup> This is the “repeated use of a drug, but without tolerance or physical symptoms directly related to drug withdrawal. Some drugs can lead to habitual use that seems to rest more on craving than physical withdrawal symptoms.”<sup>373</sup>

The third and last category is the harm that the substances cause to society.<sup>374</sup> There are various ways in which this happens:

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362. *Id.*  
 363. *Id.*  
 364. *Development, supra* note 347, at 1048.  
 365. *Id.*  
 366. *Id.*  
 367. *Id.*  
 368. *Id.*  
 369. *Development, supra* note 347, at 1048.  
 370. *Id.*  
 371. *Id.*  
 372. *Id.*  
 373. *Id.*  
 374. *Development, supra* note 347, at 1047-48.

[Substances harm society] through the various effects of intoxication, through damaging family and social life, and through the costs to systems of health care, social care, and police. Drugs that lead to intense intoxication are associated with huge costs in terms of accidental damage to the user, to others, and to property. . . .) Many drugs cause major damage to the family, either because of the effect of intoxication or because they distort the motivations of users, taking them away from their families and into drug-related activities, including crime.) Societal damage also occurs through the immense health-care costs of some drugs. . . . Of course, the overall use of a drug has a substantial bearing on the extent of social harm.<sup>375</sup>

From the mentioned categories, these authors designed a matrix in which they included various parameters of risk.<sup>376</sup> That matrix was given to different experts so that they could score, on a scale, how risky each psychoactive substance was in terms of the parameters and categories of harm.<sup>377</sup> The ratings were done by two independent groups of experts.<sup>378</sup> The first one “was the national group of consultant psychiatrists who were on the Royal College of Psychiatrists’ register as specialists in addiction.”<sup>379</sup> The second group had a broader range of expertise: “[t]hese experts had experience in one of the many areas of addiction, ranging from chemistry, pharmacology, and forensic science, through psychiatry and other medical specialties, including epidemiology, as well as the legal and police services.”<sup>380</sup>

The results obtained from the experts’ scores showed that there is no correlation between harm and the substances forbidden by the international drug control system.<sup>381</sup> In other words, the most harmful and addictive substances are not necessarily the ones forbidden.<sup>382</sup> There are legal psychoactive substances, such as alcohol and tobacco, scored to be more damaging than drugs considered to be very harmful by the international classification systems, like LSD and ecstasy.<sup>383</sup> These results challenge the assumption that the drugs forbidden are more harmful to users and society, as compared to legal drugs<sup>384</sup> The results also support the claim that

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375. *Id.* at 1048-49.

376. *Id.* at 1049.

377. *Id.*

378. *Id.*

379. *Development, supra* note 347, at 1049.

380. *Id.*

381. *Id.* at 1050 fig.1.

382. *Id.*

383. *Id.*

384. *Development, supra* note 347, at 1050 fig.1.



classification systems are arbitrary and political instead of grounded in science and evidence.<sup>385</sup>

In another article, Nutt, King, and Phillips aimed to improve the methodology used in the former study with what it is known as a multicriteria decision analysis approach (MCDA).<sup>386</sup> For such purposes, they consulted an advisory council to determine the harm criteria.<sup>387</sup> Sixteen factors were identified; “[n]ine relate to the harms that a drug produces in the individual and seven to the harms to others.”<sup>388</sup> A group of experts from a wide range of fields assessed each substance on a scale from zero to 100 (100 being the score for the most harmful substance and zero meaning no harm) and then discussed the scores and weighed the outcomes.<sup>389</sup> Overall, the most harmful drug according to the results was alcohol (with a score of 72), followed by heroin (55), crack cocaine (54), methamphetamines (33), cocaine (27), tobacco (26), amphetamine (23), cannabis (20), GHB (19), benzodiazepines and ketamine (15), methadone (14), mephedrone (13), butane (11), anabolic steroids (10), khat and ecstasy (9), LSD and buprenorphine (7) and mushrooms (closing the list at 6).<sup>390</sup> When divided into the two main categories, the most harmful drugs to users were crack cocaine (37), heroin (34), methamphetamines (32), and alcohol (26).<sup>391</sup> Regarding the harm to society, the most damaging substances were alcohol (46), heroin (21) and crack cocaine (17).<sup>392</sup>

As it can be seen from the previously mentioned studies, there is no correlation at all between how harmful a psychoactive substance is and its classification in the international drug control system.<sup>393</sup> Drugs, like cannabis, which were included in the list of the most dangerous drugs, do not appear to be as harmful as tobacco, which does not even appear in those lists.<sup>394</sup> Therefore, illegal substances are not necessarily more harmful than the legal ones.<sup>395</sup> In fact, the opposite happens in many of the cases, as in one of the studies, for example, alcohol was graded as the most harmful substance overall.<sup>396</sup> Legal substances, such as alcohol and tobacco, are more harmful

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385. *Id.* at 1052.

386. David J. Nutt et al., *Drug Harms in the UK: a Multicriteria Decision Analysis*, 376 LANCET 1558 (2010) [hereinafter *Drug Harms in the UK*].

387. *Id.* at 1564.

388. *Id.* at 1558.

389. *Id.* at 1559.

390. *Id.* at 1561.

391. *Drug Harms in the UK*, *supra* note 386, at 1560-61 fig.2.

392. *Id.* at 1561 fig.2.

393. *Id.* at 1050 fig.1, 1561 fig.2.

394. *Id.* at 1561-62 fig.2.

395. *Id.* at 1560-61 fig.2.

396. *Drug Harms in the UK*, *supra* note 386, at 1561 fig.2.

than ecstasy and mushrooms, which are illegal under the drug control system.<sup>397</sup>

### C. Addiction

The tendency of a substance to cause dependency is another factor that has been pinpointed by the narratives that defend the rationality of the War on Drugs.<sup>398</sup> According to this argument, the substances that are forbidden tend to be more addictive and cause more problematic consumption than the ones that are legal.<sup>399</sup> Therefore, it is fundamental to forbid their availability and consumption in order to prevent the great evils of problematic users and the creation of more addicts.<sup>400</sup>

This view, which is also part of the collective perception, is grounded in what is known as the disease model of drug addiction.<sup>401</sup> According to this model, illicit substances are inherently addictive since they hijack a person's brain and control him or her by making a person lose self-control and autonomy.<sup>402</sup> The substance itself, argues this model, is the main factor in a person becoming an addict.<sup>403</sup> As it is explained, this happens since drugs, due to their chemical composition, have certain hooks that make people feel the need to use a substance repeatedly.<sup>404</sup> The model, which is one of the founding roots of the War on Drugs, based its theory of addiction on experiments performed with rats in a cage.<sup>405</sup> When left in a cage with two bottles, one with water and the other one with cocaine or heroin, rats preferred the one that had the psychoactive substance.<sup>406</sup> After days, the rats became addicted to the substance and eventually died.<sup>407</sup>

The mentioned model, as well as the narratives that were built on it, have helped to construct a view of illegal psychoactive substances as extremely dangerous due to their inherent addictiveness.<sup>408</sup> Different myths have been built around this view, such as the belief that people become addicted to heroin by just trying it once.<sup>409</sup> However, later studies and other theories on

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397. *Id.* at 1561 fig.2.

398. GABOR MATÉ, *IN THE REALM OF HUNGRY GHOSTS: CLOSE ENCOUNTERS WITH ADDICTION* 293 (2008).

399. *Id.* at 153.

400. *Id.*

401. *Id.* at 150-51.

402. JOHANN HARI, *CHASING THE SCREAM: THE FIRST AND LAST DAYS OF THE WAR ON DRUGS* 173 (2015).

403. *Id.* at 171.

404. *Id.* at 183.

405. *Id.* at 171.

406. *Id.* at 171-72.

407. HARI, *supra* note 402, at 171.

408. MATÉ, *supra* note 398, at 151-52.

409. *Id.* at 155-56.

addiction have challenged the inherent addictiveness of illegal psychoactive substances and, on the contrary, have found other factors for explaining why people become addicted to drugs.<sup>410</sup> In a seminal study known as “Rat Park,” Bruce Alexander questioned whether the rats became addicted because of the drug itself or due to the setting in which they were placed in: an empty cage with two bottles.<sup>411</sup> As Alexander noted, the rats not only had nothing to do other than to use the drug, they were also totally alone in the cages.<sup>412</sup> Hence, with another colleague, he tested his hypothesis by placing the rats into two settings.<sup>413</sup>

In the first one, the laboratory rats were positioned as in the original experiments: isolated and with two bottles.<sup>414</sup> The first bottle contained just water and the second one morphine, an opiate that behaves similar to heroin when it enters the brain.<sup>415</sup> In the second set, the rats were located in what they called “rat park[s].”<sup>416</sup> As compared to the first setting, they were different.<sup>417</sup> The rats in the second setting were placed with others with whom they could interact and have sex, among other things.<sup>418</sup> Additionally, the setting included plywood walls, wheels and balls to play with, and good food.<sup>419</sup> The two bottles with the same substances as in the first setting were also kept.<sup>420</sup> The results of the experiment led Alexander to conclude that the substance was not the reason the rats became addicts; the main factor for that was the environment in which the rats were placed.<sup>421</sup> While the rats in the first setting consumed over twenty-five milligrams of morphine per day, as the earlier experiments showed, the rats in rat parks consumed less than five milligrams a day, even though they had a full twenty-four hour supply.<sup>422</sup> Also, there was some consumption in the rat parks; however, the rats never used the drugs compulsively.<sup>423</sup> Thus, there were no overdoses as in the solitary cage setting.<sup>424</sup>

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410. HARI, *supra* note 402, at 172.

411. *Id.*

412. *Id.* at 171.

413. See generally Bruce K. Alexander et al., *Effect of Early and Later Colony Housing on Oral Ingestion of Morphine in Rats*, 15 PHARMACOLOGY, BIOCHEMISTRY & BEHAV. 571 (1981).

414. *Id.* at 2.

415. HARI, *supra* note 402, at 172.

416. *Id.*

417. *Id.*

418. *Id.*

419. *Id.*

420. HARI, *supra* note 402, at 172.

421. *Id.*

422. *Id.*

423. *Id.*

424. *Id.*

These experiments inspired the development of what it is known as the social structural issues model.<sup>425</sup> According to this model, there are certain structural factors that make each person use drugs and become an addict.<sup>426</sup> It is not the psychoactive substance, *per se*, as it was argued before, but other structural factors, such as trauma, isolation, emotional instability, among others, which determine if a person becomes an addict.<sup>427</sup> One of the main exponents of this theory is Alexander himself, who in a later book, titled *The Globalization of Addiction*, expanded his argument by establishing that problems such as social isolation are key factors in determining whether someone will become addicted to a specific psychoactive substance.<sup>428</sup> In the same way, he argued that when there are upheavals in society, there will be a rise in drug dependency.<sup>429</sup>

Johann Hari, another major proponent of such a theory, challenged the traditional understanding that certain drugs are always addictive in his book titled *Chasing the Scream*.<sup>430</sup> In addition to quoting Alexander's experiments with rats, Hari explored a phenomenon which he claimed to be a similar experiment, but with humans: the Vietnam War.<sup>431</sup> Pursuant to the Archives of General Psychiatry, 20% of American troops were using heroin and became addicted while in the war.<sup>432</sup> Nonetheless, when the war ended and the troops went back to America, 95% of the heroin users "simply stopped" taking the substance, as Hari stated.<sup>433</sup> Furthermore, "[t]he addicts who received drug treatment and rehab were no more likely to stop than those who received no treatment at all."<sup>434</sup> As for the ones that continued using heroin after their return, Hari noted, they were often people that had unstable childhoods.<sup>435</sup> This phenomenon, and the rest of its research, led Hari to conclude that people use drugs and struggle with addiction not due to the hooks that a substance has, but because of different traumas that they have experienced.<sup>436</sup> According to Hari, a lack of emotional fulfillment, connection and bonds, and physical security during childhood are the reasons why people become dependent on drugs.<sup>437</sup>

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425. HARI, *supra* note 402, at 175.

426. *Id.* at 174-75; see generally BRUCE K. ALEXANDER, *THE GLOBALIZATION OF ADDICTION: A STUDY IN POVERTY OF THE SPIRIT* 509 (2008) [hereinafter *THE GLOBALIZATION OF ADDICTION*].

427. *THE GLOBALIZATION OF ADDICTION*, *supra* note 426, at 510-14.

428. *Id.* at 509.

429. *Id.* at 520; HARI, *supra* note 402, at 175.

430. HARI, *supra* note 402, at 174.

431. *Id.* at 173.

432. *Id.*

433. *Id.*

434. *Id.*

435. HARI, *supra* note 402, at 173.

436. *Id.* at 174.

437. *Id.* at 175.

In his book *In the Realm of Hungry Ghosts: Close Encounters with Addiction*, Gabor Maté also argued that there are other factors, apart from the drug itself, that determine a person's addiction to a substance.<sup>438</sup> According to Maté, it is false that “the cause of addiction resides in the power of the drug over the human brain.”<sup>439</sup> First, the aforementioned claim is false because it “obscures the existence of a basic addiction process of which drugs are only one possible object, among many. Compulsive gambling, for example, is widely considered to be a form of addiction without anyone arguing that it's caused by a deck of cards.”<sup>440</sup> Second, some drugs that have been classified as highly addictive, such as opioids, are not addictive, *per se*, as it is believed.<sup>441</sup> As “[m]edical evidence has repeatedly shown . . . opioids prescribed for cancer pain, even for long periods of time, do not lead to addiction except in a minority of susceptible people.”<sup>442</sup> Even though it is true that some people become hooked on certain substances with specific chemical compositions after a short period of use, there are other factors that influence the risk of becoming addicted.<sup>443</sup> As Maté stated, “[m]ere exposure to a stimulant or narcotic or to any other mood-altering chemical does not make a person susceptible. If she becomes an addict, it's because she's already at risk.”<sup>444</sup> Although some people will become hooked to substances after only a few times using them, this is not just because of the substance itself.<sup>445</sup>

In sum, and as concluded by Maté, drugs, including opiates (thought to be the most addictive), “do not make anyone into an addict, any more than food makes a person into a compulsive eater.”<sup>446</sup>

Most people who try [drugs], even repeatedly, will not become addicted. . . . According to a U.S. national survey, the highest rate of dependence after any use is for tobacco: 32 percent of people who used nicotine even once went on to long-term habitual use. For alcohol, marijuana, and cocaine the rate is about 15 percent, and for heroin the rate is 23 percent. Taken together, American and Canadian population surveys indicate that merely having used cocaine a number of times is associated with an addiction risk of less than 10 percent. This doesn't prove, of course, that nicotine is

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438. MATÉ, *supra* note 398, at 160.

439. *Id.* at 153.

440. *Id.* at 155.

441. *Id.*

442. *Id.* at 154.

443. MATÉ, *supra* note 398, at 160.

444. *Id.* at 155.

445. *Id.* at 156, 159.

446. *Id.* at 159.

“more” addictive than, say, cocaine. We cannot know, since tobacco—unlike cocaine—is legally available, is commercially promoted, and remains, more or less, a socially tolerated object of addiction. What such statistics do show is that whatever a drug’s physical effects and powers, they cannot be the sole cause of addiction.<sup>447</sup>

The factors that determine addiction, from Maté’s point of view, based on working as a medical doctor with different addicts in Vancouver’s downtown eastside and conducting several interviews of his patients, are threefold: “*a susceptible organism; a drug with addictive potential; and stress.*”<sup>448</sup>

As it can be seen from the new studies on addiction, there is no evidence to conclude that certain psychoactive substances are more addictive than others; there are other factors that influence whether a person will become addicted to drugs.<sup>449</sup> There is also no agreement or certainty on which factor influences a person’s addiction or problematic use most profoundly.<sup>450</sup> On the contrary, there is strong evidence to believe that the substances themselves are not the main factor to cause addiction, as the rat park study, the example of the Vietnam war troops, and Maté’s experiences have demonstrated.<sup>451</sup> Additionally, there is no proof to establish that the substances forbidden by the international drug control system are more addictive than the legal ones.<sup>452</sup> In fact, if one sees the surveys quoted before, it seems that the substance that is currently causing a large portion of addiction issues is one of the legal ones: tobacco.<sup>453</sup> This does not necessarily mean that tobacco is the most addictive drug of all, but that the atmosphere in which a person exists is also determinative of whether he or she becomes addicted.<sup>454</sup>

The numbers on drug consumption are consistent with these later theories of addiction and discredit the disease model and other early theories that argue that when a person tries a drug randomly, he or she becomes hooked to the chemical composition of the substance and, after trying it, enslaved to

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447. *Id.* at 155-56.

448. MATÉ, *supra* note 398 at 160.

449. *Id.* at 160-61.

450. *Id.* at 153.

451. *Id.* at 304; HARI, *supra* note 402, at 171-73.

452. *Development*, *supra* note 347, at 1050 fig.1.; *Drug Harms in the UK*, *supra* note 386, at 1561 fig.2.

453. *Development*, *supra* note 347, at 1050 fig.1.; *Drug Harms in the UK*, *supra* note 386, at 1561 fig.2.

454. MATÉ, *supra* note 398, at 156.

it.<sup>455</sup> Statistics on illicit drug use show that the great majority of consumers are not addicts nor problematic users.<sup>456</sup> Of the quarter-billion people that used illicit psychoactive substances in 2016, only 11.6 percent were addicts or problematic users, which shows that the most common consumption is not problematic, but instead sporadic.<sup>457</sup> All these statistics were analyzed in a recent study which concluded that:

Only a relatively small percentage of individuals who use drugs develop dependence. In these cases, their drug use is problematic and likely to place a tremendous burden on the individual and on society (WHO, 2002). Yet most people who use drugs do so only experimentally or moderately. Generally, people take drugs socially rather than living the life of a heroin addict or ‘spice zombie’ as presented in the media. This review highlights that a large majority of persons who have used drugs do not proceed to develop PDU [problematic drug use], regardless of the particular substance used. Rather, most people’s drug use is episodic and transient.<sup>458</sup>

In fact, most consumers use drugs to achieve “feelings of disinhibition and talkativeness, . . . [to] promote social bonding,” or to relax, destress, feel better, socialize, and feel pleasure.<sup>459</sup> Besides, drug users are not all irresponsible and dangerous people.<sup>460</sup> The great majority of drug consumers are responsible and happy human beings with organized lives and stable jobs.<sup>461</sup> Carl Hart, who has been chair of the Psychology department and professor at Columbia University, has studied drug users for over two decades.<sup>462</sup> Hart stated in his most recent book, *Drug Use for Grown-Ups: Chasing Liberty in the Land of Fear*, “I would soon enough find, working with all types of drug users throughout my career, that they have been some of the most responsible people I have ever known.”<sup>463</sup>

In this Part, I challenge the belief that the international drug control system is neutral based on science and that the reason to forbid certain substances is because they are more harmful and addictive than the ones that

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455. GLOB. COMM’N ON DRUG POL’Y, THE WORLD DRUG PERCEPTION PROBLEM: COUNTERING PREJUDICES ABOUT PEOPLE WHO USE DRUGS 14 (2017), <https://www.globalcommissionondrugs.org/reports/changing-perceptions> [hereinafter COUNTERING PREJUDICES].

456. *Id.*

457. *Id.*

458. Schlag, *supra* note 263, at 6.

459. COUNTERING PREJUDICES, *supra* note 455, at 21.

460. *Id.*

461. GROWN-UPS, *supra* note 73, at 6.

462. *Id.* at 1.

463. *Id.* at 6 (emphasis added).

are not forbidden by such a regime.<sup>464</sup> As it was shown, there is no evidence to determine that illicit substances are more harmful than legal ones.<sup>465</sup> Actually, what the evidence suggests is quite the opposite: there are many illicit substances less harmful than some of the legal ones.<sup>466</sup> Likewise, no single substance itself is more addictive than the others.<sup>467</sup> Susceptibility to addiction depends, according to current theories on addiction, on the person, the bonds that he or she has, and other factors.<sup>468</sup> At this point, I want to make a clarification; I am not arguing that illicit drugs are not harmful or addictive at all, nor that everybody should try or consume them. Drug abuse and misuse can cause severe health problems. Also, drugs can affect and harm other people, such as the family and communities where drug addicts or problematic users live. In some cases, these substances can even generate crime. Yet, illicit drugs are not the only substances causing such problems.<sup>469</sup> Legal drugs are also harmful and can be as addictive and problematic as illicit drugs.<sup>470</sup> What I argue, then, is that the narrative containing the sentiment that illicit psychoactive substances are evil while the legal ones are fine, tolerated, and even promoted, is wrong.<sup>471</sup> These narratives have generated confusion and chaos and have deprived us from certain benefits, as I will argue in the following segments.<sup>472</sup>

#### IV. CONSEQUENCES OF THE WRONG NARRATIVES: THE CHAOS

The mentioned misconceptions, shaped by the law and the narratives that give meaning to it, have created confusion and negative consequences.<sup>473</sup> First, illicit drug users have been heavily stigmatized and have faced discrimination as a result of these misconceptions.<sup>474</sup> As noted in the introduction, these users have been tagged as people that lack a moral compass, criminals, and mentally ill, among other things.<sup>475</sup> Second, the confusion stemming from these misconceptions has contributed to the opioid crisis that has impacted the United States since the end of the 1990s.<sup>476</sup> Third, these misconceptions have prevented responsible consumption and harm

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464. *See supra* Part III.

465. *See supra* Part III.B.

466. *See supra* Part III.B.

467. *See supra* Part III.B.

468. *See supra* Part III.C.

469. *See supra* Part III.B.

470. *See supra* Part III.B.

471. *See infra* Part IV.

472. *See infra* Parts IV-V.

473. Schlag, *supra* note 263, at 1.

474. COUNTERING PREJUDICES, *supra* note 455, at 6.

475. *See supra* Introduction; GROWN-UPS, *supra* note 73, at 6.

476. *See infra* Part IV.B.



prevention methods, and have impeded the possibility of having an appropriate debate about psychoactive substances.<sup>477</sup>

*A. Stigmatization and Discrimination*

Illicit drug users, in contrast to most licit drug consumers, have been stigmatized and discriminated against due to the images and characters created by the prohibition of certain drugs.<sup>478</sup> While consumers of alcohol, tobacco, and coffee are almost never tagged in a negative way (with some exceptions in cases of problematic use), people that use illicit substances are constantly rejected and discriminated against, even when their use is not problematic.<sup>479</sup> The narratives and images produced by the prohibition of certain drugs have created beliefs that illicit drug users are always useless and dangerous people, that they are criminals, and that they do not contribute to society.<sup>480</sup> Numerous surveys have shown that, throughout the world, people think that only insane people take illicit drugs, that users lack self-discipline and willpower, and that they are useless and “worthless.”<sup>481</sup> Drug users, due to the unfair images created, have been constantly dehumanized and considered to belong to a subordinate social category.<sup>482</sup>

By portraying illicit drugs as great evils, threats, and enemies to humankind, the international drug control regime has helped to shape the current stigma that users of those substances face and the discrimination that they are subjected to.<sup>483</sup> Before the prohibition of certain drugs, users of the currently illicit psychoactive substances were not targeted and negatively labeled for their consumption.<sup>484</sup> In fact, as it was described before, there were cases in which it was better to be seen as someone under the effects of opioids than alcohol.<sup>485</sup> The shift started after the bad publicity created by the War on Drugs and it has since been reproduced and amplified by the media.<sup>486</sup>

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477. See *infra* Parts IV.C, V.

478. COUNTERING PREJUDICES, *supra* note 455, at 6.

479. BANCROFT, *supra* note 61, at 119; COUNTERING PREJUDICES, *supra* note 455, at 14.

480. ANSLINGER & OURSLER, *supra* note 183, at 4; MATÉ, *supra* note 398, at 328.

481. See Ruth Bryan et al., *Public Attitudes Towards People With Drug Dependence and People, in RECOVERY: PEOPLE, COMMUNITIES AND PLACES 3* (2016), <http://www.gov.scot/Publications/2016/06/3496/1>; see generally Axel Klein, “Have a Piss, Drink Ogogoro, Smoke Igbo, but don’t take Gbana”-Hard and Soft Drugs in Nigeria: A Critical Comparison of Official Policies and the View on the Street, 33 J. PSYCHOACTIVE DRUGS 114 (2001); UK DRUG POL’Y COMM’N, REPRESENTATIONS OF DRUG USE AND DRUG USERS IN THE BRITISH PRESS: A CONTENT ANALYSIS OF NEWSPAPER COVERAGE 47 (2010), [www.ukdpc.org.uk/publications.shtml#Stigma\\_reports](http://www.ukdpc.org.uk/publications.shtml#Stigma_reports).

482. Bryan et al., *supra* note 481, at 3.

483. Schlag, *supra* note 263, at 1.

484. HARI, *supra* note 402, at 38-39.

485. FERNANDEZ & LIBBY, *supra* note 123, at 12-13.

486. Schlag, *supra* note 263, at 1.

These narratives have impacted the public opinion about drug users, who are sometimes called “crackheads,” “junkies,” “drug abusers,” “addicts,” and “pill heads,” among other things, despite the fact that in the majority of cases, as it was said before, their consumption is not problematic.<sup>487</sup> The negative language does not stop with the people that currently use the illicit drugs but also applies to the ones that are recovering.<sup>488</sup> These recovering or recovered people are tagged as “clean,” a word that implies that they were dirty before or “rehabilitated,” which also suggests that they were incapable of functioning while consuming.<sup>489</sup> These labels imply that drug use is so grave that there is no medical condition more stigmatized than drug abuse or addiction.<sup>490</sup>

The discrimination and stigmatization suffered by drug users occurs all around the globe.<sup>491</sup> In addition to some of the examples of the Latin American countries that heavily stigmatize the drugs named in the introduction, it is possible to add many others around the world.<sup>492</sup> In Nigeria, for instance, the majority of people claim that drug users are “useless” and “irresponsible.”<sup>493</sup> A similar study conducted in different Asian and North African countries showed that most people believe that drug users should be punished because they are evil and mean people.<sup>494</sup> World leaders have also heavily stigmatized and persecuted drug users.<sup>495</sup> For example, the President of the Philippines, Rodrigo Duterte, said that he will kill illicit drug users.<sup>496</sup> When discussing killing illicit drug users, Duterte said, “Hitler massacred 3

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487. COUNTERING PREJUDICES, *supra* note 455, at 28; see Bryan et al., *supra* note 481, at 15, 21.

488. Bryan et al., *supra* note 481, at 21.

489. COUNTERING PREJUDICES, *supra* note 455, at 28.

490. See R. Room et al., *Cross-Cultural Views on Stigma, Valuation, Parity, and Societal Values Towards Disability*, in *DISABILITY AND CULTURE: UNIVERSALISM AND DIVERSITY* 247-53 (T. Bedirhan Üstün et al. eds., 2001); see also Lindsay A. Phillips & Autherine Shaw, *Substance Use More Stigmatized than Smoking and Obesity*, 18 J. SUBSTANCE USE 247, 250 (2013).

491. *The Real Stigma of Substance Use Disorders*, RECOVERY RES. INST., <https://www.recoveryanswers.org/research-post/the-real-stigma-of-substance-use-disorders/#:~:text=Stigma%20is%20an%20attribute%2C%20behavior,the%20most%20stigmatized%20conditions%20internationally> (last visited Sept. 6, 2022) [hereinafter *The Real Stigma*].

492. See *supra* Introduction; see generally *The Real Stigma*, *supra* note 491.

493. Ashoka Mukpo, *Out of the Shadows: Adopting a Peacebuilding Approach to the Social Effects of Drug Use in Nigeria*, INT’L ALERT 6, 30 (Mar. 2017), <https://www.international-alert.org/wp-content/uploads/2021/08/Nigeria-Drug-Use-EN-2017.pdf>.

494. MENAHRA, MULTICENTRE OPERATIONAL RESEARCH ON DRUG USE & HARM REDUCTION AMONG PEOPLE LIVING WITH HIV/AIDS IN THE MIDDLE EAST AND NORTH AFRICA REGION (2017), [https://www.menahra.org/images/OPERATIONAL\\_RESEARCH\\_ON\\_DRUG\\_USE\\_HARM\\_REDUCTION\\_AMONG\\_PEOPLE\\_LIVING\\_WITH\\_HIVAIDS\\_IN\\_MENA\\_-\\_web.pdf](https://www.menahra.org/images/OPERATIONAL_RESEARCH_ON_DRUG_USE_HARM_REDUCTION_AMONG_PEOPLE_LIVING_WITH_HIVAIDS_IN_MENA_-_web.pdf).

495. Oliver Holmes, *Rodrigo Duterte Vows to Kill 3 Million Drug Addicts and Likens Himself to Hitler*, GUARDIAN (Sept. 30, 2016) <https://www.theguardian.com/world/2016/sep/30/rodrigo-duterte-vows-to-kill-3-million-drug-addicts-and-likens-himself-to-hitler>.

496. *Id.*

million Jews . . . there's 3 million drug addicts. There are. I'd be happy to slaughter them."<sup>497</sup>

The stigmatization and discrimination against illicit drug users not only stems from the general population and public figures, but also from people that work in clinical care.<sup>498</sup> As it has been demonstrated by different studies, it is very common for health professionals to discriminate against and stigmatize patients with substance use disorders.<sup>499</sup> This creates an ineffective health care system for patients with drug use disorders that results in different problems, such as diminishing patients' feelings of empowerment and worsening treatment outcomes.<sup>500</sup> Indeed, "[b]eyond just impeding the provision or seeking of care, stigma may actually enhance or reinstate drug use, playing a key part in the vicious cycle that drives addicted people to continue using drugs,"<sup>501</sup> since "the more society stigmatizes and rejects people who use drugs, the fewer opportunities for treatment will be on offer."<sup>502</sup>

In sum, the prohibition of certain drugs has created a stigmatization of illicit drug users who are discriminated against as a consequence.<sup>503</sup> This directly affects these consumers and prevents them from finding treatment, even if they are motivated to do so.<sup>504</sup>

### B. Opioid Epidemic

A second negative consequence of the confusion created by the narratives and images of the prohibition of certain drugs is that it enabled the opioid epidemic to happen.<sup>505</sup> This epidemic has affected the United States and Canada since the end of the 1990s.<sup>506</sup>

497. *Id.*

498. *Stigma and Discrimination*, NAT'L INST. DRUG ABUSE, <https://nida.nih.gov/research-topics/stigma-discrimination#language> (last visited Sept. 6, 2022) [hereinafter *Stigma and Discrimination*].

499. Leonieke C. van Boekel et al., *Stigma Among Health Professionals Towards Patients with Substance Use Disorders and Its Consequences for Healthcare Delivery: Systematic Review*, 131 DRUG ALCOHOL DEPENDENCE 23 (2013).

500. *Id.*

501. Dr. Nora Volkov, *Addressing the Stigma that Surrounds Addiction*, NAT'L INST. DRUG ABUSE (Apr. 22, 2020), <https://nida.nih.gov/about-nida/noras-blog/2020/04/addressing-stigma-surrounds-addiction> (last visited Oct. 6, 2022).

502. COUNTERING PREJUDICES, *supra* note 455.

503. See *Stigma and Discrimination*, *supra* note 498.

504. Michael Shiner, *Drug Policing: What is it Good For?* In AFTER THE DRUG WARS: REPORT OF THE LSE EXPERT GROUP ON THE ECONOMIC OF DRUG POLICY 61 (Feb. 2016), <https://www.lse.ac.uk/ideas/Assets/Documents/reports/LSE-IDEAS-After-Drug-Wars.pdf>.

505. Andrew Kolodny, *How FDA Failures Contributed to the Opioid Crisis*, 22 AMA J. ETHICS 743, 744-46 (2020) [hereinafter *FDA Failures*].

506. *Understanding the Epidemic*, CTRS. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/drugoverdose/epidemic/index.html> (last updated Mar. 17, 2021) [hereinafter *Understanding the Epidemic*].

The term “opioid epidemic” is used to refer to the rapid increase in both addicted individuals and deaths due to the use of opiates (also known as opioids) in some parts of North America, especially the United States and Canada, for more than 20 years.<sup>507</sup> It began at the end of the 1990s, when doctors, pushed by certain pharmaceutical companies, started overprescribing opioids to treat all kinds of pain.<sup>508</sup> Part of the pharmaceutical industry began a marketing strategy that exaggerated the benefits of opiates as a way to treat pain and minimized the risks of taking such drugs in certain quantities or doses.<sup>509</sup> This massive marketing campaign was easy to sell and expand because the drugs to be prescribed were not part of the “evil bag” of illicit drugs, with the exception of non-legal opiates such as heroin and fentanyl.<sup>510</sup> On the contrary, those opioid substances were permitted with a prescription.<sup>511</sup> Since these drugs were legal and the pharmaceutical companies were promoting them, doctors started prescribing them with no limitations and patients began taking them, thinking they were extremely safe and effective.<sup>512</sup> The image of legality gave the seal of security that the public needed to feel comfortable consuming them.<sup>513</sup> Meanwhile, psychedelic substances, such as LSD or marijuana, although constantly considered less harmful than opiates, were seen as extremely dangerous.<sup>514</sup>

The roots of the epidemic are grounded in a paper published in 1986 called *Chronic use of opioid analgesics in non-malignant pain: report of 38 cases*, which was later quoted by several studies despite its lack of quality evidence.<sup>515</sup> Pharmaceutical companies, such as Purdue Pharma, using the report as a basis, started aggressive campaigns for prescribed opiates.<sup>516</sup> For example, Purdue Pharma funded around 20,000 educational programs that encouraged long-term use of prescriptive opioids for chronic non-cancer pain.<sup>517</sup> The campaign led to the overdistribution and prescription of

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507. *Opioid Overdose Crisis: Time for a Radical Rethink*, 7 LANCET PUB. HEALTH e195 (Mar. 2022), <https://www.thelancet.com/action/showPdf?pii=S2468-2667%2822%2900043-3>.

508. Ronald Hirsch, *The Opioid Epidemic: It's Time to Place Blame Where It Belongs*, 114 MO. MED. 82, 82-83, 90 (2017).

509. See *FDA Failures*, *supra* note 505, at 562.

510. See generally Hirsch, *supra* note 508.

511. See generally *id.*

512. See generally *id.*

513. See, e.g., *Brenda*, CTRS. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/rxawareness/stories/brenda.html> (last updated Sept. 22, 2017).

514. See generally Emily Sohn, *Weighing the Dangers of Cannabis*, NATURE (Aug. 28, 2019), <https://www.nature.com/articles/d41586-019-02530-7>; see BANCROFT, *supra* note 61, at 118.

515. Andrew Kolodny et al., *The Prescription Opioid and Heroin Crisis: A Public Health Approach to an Epidemic of Addiction*, ANN. REV. PUB. HEALTH 559, 562, 572 n.61 (Jan. 12, 2015), <https://www.annualreviews.org/doi/pdf/10.1146/annurev-publhealth-031914-122957> [hereinafter *Crisis*].

516. *Crisis*, *supra* note 515, at 562.

517. *Id.*

opioids.<sup>518</sup> There was no consideration of whether they would be beneficial for the patient.<sup>519</sup> They were prescribed to many people that misused drugs.<sup>520</sup> The supply of opiates was so excessive that in some states there were more bottles of prescribed painkillers than people.<sup>521</sup> America has since become the world leader in prescribed opiates.<sup>522</sup>

The risks of consuming opioids in the quantities prescribed were much higher than the benefits.<sup>523</sup> However, based on the perception that opioids were safe, patients started overconsuming the drugs, sometimes mixing them with other legal substances.<sup>524</sup> Some people trusted that there was no risk in consuming them in the quantities prescribed since the substances were legal and prescribed.<sup>525</sup>

Since the epidemic started, nearly 500,000 people have died in the United States due to an opioid-related overdose.<sup>526</sup> This statistic also includes illicit opiates, but the majority of the patients became addicts through the prescribed ones.<sup>527</sup> In other words, people were overprescribed opiates in the United States and some of those people became addicted to them.<sup>528</sup> Once they became addicts and were without valid prescriptions, they had to supply their needs through the black market with illegal opioids such as fentanyl and heroin.<sup>529</sup> Nonetheless, during the first wave of the epidemic, namely from 1999 to 2008, there were more deaths related to prescribed opioids than from heroin and cocaine combined.<sup>530</sup> In 2008, the last year of what was considered the first wave, 73.8 percent of the deaths by overdose were caused by prescribed opioids.<sup>531</sup> After this period, in what was known as the

518. See generally Hirsch, *supra* note 508.

519. *Crisis*, *supra* note 515, at 566; Julie Appleby & Elizabeth Lucas, *While Addiction Crisis Raged, Many Surgeons Overprescribed Opioids, Analysis Shows*, KAISER HEALTH NEWS (June 21, 2019), <https://www.statnews.com/2019/06/21/surgeons-overprescribed-opioids-analysis-shows/>.

520. See generally Hirsch, *supra* note 508.

521. *Opioid Painkiller Prescribing: Where You Live Makes a Difference*, CTRS. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/vitalsigns/opioid-prescribing/> (last updated Sept. 5, 2022).

522. Dina Gusovsky, *Americans Consume Vast Majority of the World's Opiates*, CNBC, <https://www.cnbc.com/2016/04/27/americans-consume-almost-all-of-the-global-opioid-supply.html> (last updated Apr. 27, 2016, 1:06 PM).

523. *Crisis*, *supra* note 515, at 562.

524. Marissa B. Esser et al., *Binge Drinking and Prescription Opioid Misuse in the U.S., 2012-2014*, 57 AM. J. PREVENTIVE MED. 197 (2019).

525. See generally Hirsch, *supra* note 508.

526. *Understanding the Epidemic*, *supra* note 506.

527. *Id.*

528. *Crisis*, *supra* note 515, at 563, 566.

529. Wilson M. Compton et al., *Relationship Between Nonmedical Prescription-Opioid Use and Heroin Use*, 374 NEW ENG. J. MED. 154, 155 (2016).

530. *Vital Signs: Overdoses of Prescription Opioid Pain Relievers — United States, 1999-2008*, CTRS. FOR DISEASE CONTROL & PREVENTION (Nov. 4, 2011), <https://www.cdc.gov/mmwr/preview/mmwrhtml/mm6043a4.htm>.

531. *Id.*

second and third waves, there was an increase in deaths involving heroin and illicit fentanyl.<sup>532</sup> However, in the majority of these cases (75 percent), all the misuse and problems began because people were introduced to opiates through prescriptions.<sup>533</sup> The problem is not limited to the overdose deaths. Today, and for the last twenty years, millions of North Americans have suffered substance use disorders from prescribed opioid pain relievers.<sup>534</sup>

All this chaos has been facilitated by the confusion created by the international drug control regime. The pharmaceutical companies, taking advantage of the inaccurate images of harm and addiction created by the prohibition of certain drugs, misinformed many American citizens who started taking opioids in irresponsible ways and quantities.<sup>535</sup> Many of those citizens trusted the drugs prescribed because they were legal and promoted by those who were considered experts.<sup>536</sup> All of that led to one of the biggest tragedies in recent history in North America: the opioid epidemic.

### C. Preventing Responsible Consumption

The division between good and bad psychoactive substances has impacted the way they are consumed and their quality. While the legal ones can be consumed publicly and in safe environments, the illicit ones have been usually relegated to clandestine and unsafe atmospheres.<sup>537</sup>

Regularly consuming illicit drugs is not safe.<sup>538</sup> First, it is not safe because these substances do not have quality checks, as is the case for the legal ones.<sup>539</sup> Therefore, the product that the consumer gets is not subject to any formal control and is frequently mixed with substances of low or bad quality to increase their volume.<sup>540</sup> Second, since the consumption is forbidden and criminalized, users need to hide and consume in places where it is difficult, or almost impossible, to access health services in case of misuse

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532. *Understanding the Epidemic*, *supra* note 506.

533. Theodore J. Cicero et al., *The Changing Face of Heroin Use in the United States: A Retrospective Analysis of the Past 50 Years*, 71 JAMA PSYCHIATRY 821, 823 (2014).

534. See generally Devesh Vashishtha et al., *The North American Opioid Epidemic: Current Challenges and a Call for Treatment as Prevention*, 14 HARM REDUCTION J. (2017).

535. See *supra* Part IV.B.

536. See generally *Overcoming Opioid Addiction: A Woman Shares Her Story*, YALE MED. (Feb. 28, 2017), <https://www.yalemedicine.org/news/overcoming-opioid-addiction>.

537. See, e.g., Josh Moe, *A Full-Time Job in Hell: My Journey in and Out of Opioid Addiction*, HEALTHPARTNERS, <https://www.healthpartners.com/blog/a-full-time-job-in-hell-my-journey-in-and-out-of-opioid-addiction/> (last visited Sept. 9, 2022).

538. *The Risks of Using Drugs*, SA HEALTH, <https://www.sahealth.sa.gov.au/wps/wcm/connect/public+content/sa+health+internet/healthy+living/is+your+health+at+risk/the+risks+of+using+drugs> (last updated Apr. 2, 2022).

539. *Against Drug Prohibition*, AM. CIV. LIBERTIES UNION, <https://www.aclu.org/other/against-drug-prohibition> (last visited Sept. 8, 2022).

540. *Id.*

or emergencies.<sup>541</sup> Third, the fear of being criminalized for using substances deters people from seeking medical attention when they need it.<sup>542</sup> Fourth, the condemnation of friends and family members discourages them from seeking help and advice because they fear being stigmatized, discriminated against, persecuted, and punished.<sup>543</sup> Fifth, since the consumption of illicit drugs is taboo, information about them is not accessible to many people, specially marginal communities. As a consequence, it is difficult for them to have sufficient knowledge about what quantities are safe to consume, possible side effects, or what to do in case of misuse or emergency.

All of this has banished the possibility of having a responsible debate about drug consumption. Can illicit substances be consumed responsibly in specific quantities? What substances are safe when consumed with others? What are the symptoms of an overdose? What do drug users do in case of an overdose? What are the possible side effects of consuming illicit substances? What are the benefits and disadvantages of consuming each of the substances?

All of these questions still remain unanswered for many people, and that makes the consumption of illicit psychoactive substances sometimes risky and dangerous. In fact, with proper information, many lives could be saved. For instance, if people knew that mixing heroin with other substances is extremely dangerous, they might try to avoid mixing it. However, since these drugs are taboo and the only limited information is available, people do mix them a lot.<sup>544</sup> The reality is that most heroin users do not die from taking the drug but from mixing it with other substances.<sup>545</sup> The confusion created through prohibition of heroin does not facilitate responsible use of the substance; it promotes the ideas that *heroin kills, it is extremely addictive and it is evil*.<sup>546</sup> Nonetheless, a more effective message would be: *if you consume heroin, do not mix it with other drugs*.<sup>547</sup>

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541. See generally Lisa Maher & David Dixon, *Policing and Public Health: Law Enforcement and Harm Minimization in a Street-Level Drug Market*, 39 BRIT. J. CRIMINOLOGY 488 (1999); Scott Burris et al., *Addressing the "Risk Environment" for Injection Drug Users: The Mysterious Case of the Missing Cop*, 82 MILBANK Q. 125 (Mar. 2004).

542. See generally van Boekel et al., *supra* note 499.

543. Naresh Nebhinani et al., *Reasons for Help-Seeking and Associated Fears in Subjects with Substance Dependence*, 34 INDIAN J. PSYCHOL. MED 152, 154 (2012).

544. *Heroin Overdose*, MOUNT SINAI HEALTH SYS., <https://www.mountsinai.org/health-library/poison/heroin-overdose> (last visited Oct. 7, 2022).

545. Carl L. Hart, *People Are Dying Because of Ignorance, not Because of Opioids*, SCI. AM. (Nov. 1, 2017), <https://www.scientificamerican.com/article/people-are-dying-because-of-ignorance-not-because-of-opioids/> [hereinafter *Ignorance*].

546. See *id.*; See Rich Kinsey, *Heroin - The Evil Scourge of the Illegal Drug World*, ANN ARBOR NEWS (Sept. 15, 2011, 5:15 AM), <http://www.annarbor.com/news/crime/heroin/>.

547. *Ignorance*, *supra* note 545.

It is extremely important to consume psychedelics in a responsible way.<sup>548</sup> Despite the great benefits that these substances have proved to provide, the consumption of psychedelics in inadequate atmospheres and by people with certain preconditions can cause what is known as a “bad trip.”<sup>549</sup> Bad trips can make people do unwise things, such as walking through traffic, jumping from high places or even, on very rare occasions, attempting suicide.<sup>550</sup> A bad trip can take someone to a terrifying psychotic state, causing one of the most difficult experiences in a person’s life, as was said by many of the people interviewed in a study done by Theresa Carbonaro.<sup>551</sup> Nonetheless, when taken in a safe setting and with the correct knowledge, as will be explained with more detail below, they have proven to be extremely beneficial.<sup>552</sup>

The impossibility of responsible consumption has another terrible consequence: it has caused an increase in the spread of HIV, tuberculosis, and viral hepatitis C and B.<sup>553</sup> Since drug users are relegated to unsafe atmospheres to consume, they end up practicing unhygienic practices, such as sharing needles for injecting drugs.<sup>554</sup> According to the United Nations and World Health Organization, around eleven million people in the world inject illicit drugs.<sup>555</sup> Approximately one in eight intravenous drug users is living with HIV and 39.4 percent have hepatitis.<sup>556</sup> Of the new cases of HIV worldwide, ten percent are attributed to intravenous drug use and between 23 percent and 39 percent of the new hepatitis cases are attributed to intravenous users as well.<sup>557</sup> Likewise, 33 percent of hepatitis-related deaths are attributed to intravenous drug use in unsafe environments.<sup>558</sup>

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548. Theresa M. Carbonaro et al., *Survey Study of Challenging Experiences After Ingesting Psilocybin Mushrooms: A Cute and Enduring Positive and Negative Consequences*, 30 J. PSYCHOPHARMACOLOGY 1268 (2016).

549. *Id.* at 1275.

550. *Id.* at 1274-75.

551. *Id.* at 1275.

552. MICHAEL POLLAN, HOW TO CHANGE YOUR MIND: WHAT THE NEW SCIENCE OF PSYCHEDELICS TEACHES US ABOUT CONSCIOUSNESS, DYING, ADDICTION, DEPRESSION, AND TRANSCENDENCE 25 (2018).

553. See *Global HIV, Hepatitis and STIs Programmes*, WHO, <https://www.who.int/teams/global-hiv-hepatitis-and-stis-programmes/populations/people-who-inject-drugs> (last visited Sept. 6, 2022) [hereinafter *Global HIV*].

554. Wallace Mandell et al., *Correlates of Needle Sharing Among Injection Drug Users*, 84 AM. J. PUB. HEALTH 920, 920 (June 1994).

555. *Global HIV*, *supra* note 553.

556. *Id.*

557. *Id.*

558. *Id.*



## V. ILLICIT DRUG BENEFITS

The consequences pointed out in Part IV are not the only unfavorable effect of the ethical border that has been shaped by the reproduction of the prohibitionist narrative.<sup>559</sup> Due to the idea that illicit drug use is always bad and causes addiction, some people are losing potential benefits that could be achieved by consuming certain substances in specific amounts and in safe environments.<sup>560</sup>

As I stated before, my aim is not to promote drug use. However, in my opinion, illicit drug consumption is not always negative and does not always end in a bad experience. The great majority of drug consumption is not problematic and has no negative outcomes, as the statistics presented before demonstrate.<sup>561</sup> A risk-benefit analysis showed that many kinds of drug use could end up being positive for the consumer.<sup>562</sup> Drugs, despite being demonized, can also bring different positive outcomes. If all drugs are framed as dangerous, rather than substances that can be used to enhance life, we end up with our current policies that fail to consider the possible benefits of drug use. Illicit drugs have different benefits, and that is the reason why some people consume them.<sup>563</sup> Among other things, drugs enhance people's social ability, boost social interactions, decrease anxiety, improve sleep increase energy, give people inspiration, improve focus, help people to feel happiness and pleasure, reduce stress, increase perception and alter feelings, improve libido and athletic performance, and decrease physical and psychological pain.<sup>564</sup>

Individuals could make better decisions about whether to use a substance if the accurate and scientific risks and benefits of using drugs were publicized; thus, changing the sentiment that drugs are taboo. It is possible, as Carl Hart has argued, to use illicit drugs just for fun, to achieve one of the aforementioned benefits; drugs can be used responsibly and can lead to a happy life.<sup>565</sup> Contrary to popular belief, not every drug consumer is an

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559. See generally *id.*

560. See Marc Lallanilla, *6 Party Drugs That May Have Health Benefits*, LIVE SCI. (Nov. 18, 2013), <https://www.livescience.com/41277-health-benefits-illegal-drugs.html>.

561. See COUNTERING PREJUDICES, *supra* note 455, at 14.

562. See Lallanilla, *supra* note 560.

563. See Jennifer Power, *Drug Use Can Have Social Benefits, and Acknowledging This Could Improve Rehabilitation*, CONVERSATION (Apr. 1, 2018, 4:28 PM), <https://theconversation.com/drug-use-can-have-social-benefits-and-acknowledging-this-could-improve-rehabilitation-93978#:~:text=The%20social%20benefits%20of%20drug%20use%20are%20more%20complex%20to%20quantify> [hereinafter *Social Benefits*].

564. *Id.*

565. GROWN-UPS, *supra* note 73, at 10.

addict, subservient to an evil substance that makes him or her do immoral things.<sup>566</sup>

There are multiple examples of people who consume illicit drugs responsibly, as a successful means to a better and happier life.<sup>567</sup> For example, Hart makes the following confession in his recent book, *Drug Use for Grown-Ups Chasing Liberty in the Land of Fear*:

I am an unapologetic drug user. I take drugs as part of my pursuit of happiness, and they work. I am a happier and better person because of them. I am also a scientist and a professor of psychology specializing in neuroscience at Columbia University, known for my work on drug abuse and addiction.<sup>568</sup>

By stating that illicit drugs have detrimental effects, which are in fact a small portion of their consequences, but failing to mention any of the benefits, the narratives of the prohibitionist regime have had “a damning impact on how so-called recreational drugs are regulated and inevitably on your own decision as to whether or not to partake of them.”<sup>569</sup>

[Over the course of a] more than twenty-five-year career, [Hart has] discovered that most drug-use scenarios cause little or no harm and that some responsible drug-use scenarios are actually beneficial for human health and functioning. Even “recreational” drugs can and do improve day-to-day living. . . . As you will discover, a number of beneficial effects have been observed with other drugs as well. From [his] own experience—the combination of [his] scientific work and [his] personal drug use, [he] ha[s] learned that recreational drugs can be used safely to enhance many vital human activities.<sup>570</sup>

Additionally, the wrong images and constructed realities surrounding the prohibition of drugs have had an impact in the scientific study of the possible benefits of drugs, creating the stigma that drug consumption is always detrimental to the health of consumers.<sup>571</sup> The majority of studies have centered on those effects and not on the possible positive outcomes of consuming the aforementioned substances.<sup>572</sup> The lack of findings in this

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566. *Id.* at 11.

567. *Id.* at 118.

568. *Id.* at 1.

569. *Id.* at 8.

570. GROWN-UPS, *supra* note 73, at 6-8.

571. See Tanya Lewis, *Johns Hopkins Scientists Give Psychedelics the Serious Treatment*, SCI. AM. (Jan. 16, 2020), <https://www.scientificamerican.com/article/johns-hopkins-scientists-give-psychedelics-the-serious-treatment/>.

572. See generally *id.*

regard also impedes people who might benefit from consuming substances.<sup>573</sup> There are, however, some studies on the benefits of consuming different prohibited drugs, as it will be shown below.<sup>574</sup>

*A. “Play and Party Drugs” and Their Impact on People Living With HIV*

Party drugs are substances consumed, as the name suggests, at parties, concerts, festivals, or nightclubs.<sup>575</sup> They are oftentimes taken by certain people just to have fun because they provide energy, help people to socialize, and increase sexual pleasure.<sup>576</sup> These include methamphetamine (also known as meth), cocaine, MDMA (commonly referred to as ecstasy), and ketamine.<sup>577</sup> All of these drugs are included in the schedules of the United Conventions and all of the substances, except ketamine, are considered to be extremely addictive and harmful.<sup>578</sup>

A study performed in Australia found that some of these drugs, especially crystal methamphetamine, may increase a person’s emotional well-being, particularly if he or she is living with HIV.<sup>579</sup> The purpose of this study was to determine whether the use of party drugs in either social or sex-based settings helps to enable social and support networks for people living with HIV, thus increasing feelings of well-being.<sup>580</sup> Australian HIV-positive party drug users and non-users were “examined [in order to observe] the indirect effect of drug use on wellbeing via social connectedness and support.”<sup>581</sup>

Of the approximately 900 study subjects, almost 30 percent used party drugs during the previous twelve months.<sup>582</sup> Five percent of the party drug users reported regular use, while the other ten percent only consumed them occasionally.<sup>583</sup> After analyzing the results, the authors of the study concluded that “[c]ompared with non-users, party-and-play drug users reported higher levels of resilience and lower levels of perceived HIV-related

573. See generally Lallanilla, *supra* note 560.

574. See *infra* Part V.

575. *Common Types of Party Drugs Young Adults Abuse During Spring Break*, NEWPORT INST. (Mar. 23, 2022), <https://www.newportinstitute.com/resources/co-occurring-disorders/party-drugs/#:~:text=Also%20known%20as%20club%20drugs,bars%2C%20nightclubs%2C%20and%20concerts.>

576. *Social Benefits*, *supra* note 563.

577. *Id.*

578. *Drug Scheduling*, U.S. DRUG ENFORCEMENT ADMIN., <https://www.dea.gov/drug-information/drug-scheduling> (last visited Sept. 22, 2022).

579. Jennifer Power et al., *Sex, Drugs, and Social Connectedness: Wellbeing Among HIV Positive Gay and Bisexual Men Who Use Party-and-Play Drugs*, 15 *SEXUAL HEALTH* 135, 138 (2018), <https://pubmed.ncbi.nlm.nih.gov/29544599/> [hereinafter *Party-and-Play Drugs*].

580. *Id.* at 135.

581. *Id.*

582. *Id.*

583. *Id.* at 135, 138.

stigma. This was associated with spending more time with other people living with HIV . . . .”<sup>584</sup> In addition, the study found that party drug users had a greater sense of support from other people living with HIV.<sup>585</sup> These outcomes show that the consumption of party and play drugs can provide benefits to people because they caused an increase in HIV-positive people’s feelings of wellbeing (people who are usually subject to stigma for living with this virus).<sup>586</sup> In sum, using party and play drugs may provide wellbeing benefits in certain social contexts.<sup>587</sup>

There are a lot of misconceptions and unfair prejudices regarding HIV, and people living with it suffer from stigma and discrimination.<sup>588</sup> Nevertheless, the consumption of certain substances could help HIV-positive people to adapt to their adverse situations and live better and happier lives.<sup>589</sup>

### B. *The New Science of Psychedelics*

Psychedelic drugs such as the lysergic acid diethylamide (known colloquially as LSD or acid) and psilocybin also have various benefits for people.<sup>590</sup> These substances became popular during the second part of the 20th century, both in the counter-culture movement and in the scientific community.<sup>591</sup> However, they were criminalized by the end of the 1960s because they were held to be addictive and dangerous for people’s minds.<sup>592</sup> They sometimes caused instant insanity.<sup>593</sup> For more than twenty years, these drugs were almost forgotten.<sup>594</sup>

Convinced that science and culture had lost something valuable, a group of researchers and psychotherapists decided to start studying psychedelics again in the 1990s.<sup>595</sup> Recent scientific studies of psychedelics have shown that these substances have several benefits.<sup>596</sup> First, researchers have shown that psilocybin helps to reduce anxiety and depression in terminal cancer patients.<sup>597</sup> According to one study:

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584. *Party-and-Play Drugs*, *supra* note 579, at 135.

585. *Id.* at 138.

586. *Id.* at 135.

587. *Id.*

588. *Id.*

589. *Party-and-Play Drugs*, *supra* note 579, at 135.

590. HAVE A GOOD TRIP: ADVENTURES IN PSYCHEDELICS (Netflix May 11, 2020) [hereinafter HAVE A GOOD TRIP].

591. *Id.*

592. *Id.*

593. *See id.*

594. POLLAN, *supra* note 552, at 25.

595. *Id.* at 3.

596. Roland R Griffiths et al., *Psilocybin Produces Substantial and Sustained Decreases in Depression and Anxiety in Patients With Life-Threatening Cancer: A Randomized Double-Blind Trial*, 30 J. PSYCHOPHARMACOLOGY 1181 (2016).

597. *Id.*

High-dose psilocybin produced large decreases in clinician- and self-rated measures of depressed mood and anxiety, along with increases in quality of life, life meaning, and optimism, and decreases in death anxiety. At 6-month follow-up, these changes were sustained, with about 80% of participants continuing to show clinically significant decreases in depressed mood and anxiety. Participants attributed improvements in attitudes about life/self, mood, relationships, and spirituality to the high-dose experience, with >80% endorsing moderately or greater increased well-being/life satisfaction.<sup>598</sup>

Psilocybin is not the only illicit substance that has been proven to have mood-enhancing effects.<sup>599</sup> Later studies have shown that other psychedelics help to improve mood both in the short term and the long term, not only in terminal patients but in other people as well.<sup>600</sup> Early findings show that mood-enhancing effects could be observed in a laboratory setting.<sup>601</sup> Nonetheless, according to previous studies,

[the] use of psychedelics was associated with increased positive mood through the experience of personal transformation and feelings of connectedness to others. [These] findings validate recent reports of mood-enhancing effects of psychedelic substances in laboratory settings and suggest that these effects manifest at least in part through changes in the experience of social relationships.<sup>602</sup>

In other words, psychedelic use in settings different than a laboratory, such as art and music festivals, resulted in very positive experiences similar to the ones found during laboratory use.<sup>603</sup>

Furthermore, psychedelics have proved to be useful in treating different mental health disorders.<sup>604</sup> First, psilocybin has proven to be helpful in treating patients with mild to severe treatment-resistant depression.<sup>605</sup> In one study, all of the patients tolerated the substance well and no unexpected or serious adverse events occurred when it was used.<sup>606</sup> The researchers found that depressive symptoms were reduced to one week and three months after

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598. *Id.*

599. Matthias Forstmann et al., *Transformative Experience and Social Connectedness Mediate the Mood-Enhancing Effects of Psychedelic Use in Naturalistic Settings*, 117 *PROC. NAT'L ACAD. SCI.* 2338, 2344 (2019) [hereinafter *Transformative Experience*].

600. *Id.* at 2338; see Griffiths et al., *supra* note 596, at 1181.

601. *Transformative Experience*, *supra* note 599, at 2338.

602. *Id.*

603. *Id.*

604. Robin L. Carhart-Harris et al., *Psilocybin With Psychological Support for Treatment-Resistant Depression: An Open-Label Feasibility Study*, 3 *LANCET PSYCHIATRY* 619, 625 (2016).

605. *Id.* at 619.

606. *Id.* at 626.

high-dose treatment and (there were marked and sustained improvements in anxiety and anhedonia<sup>607</sup> (the inability to feel pleasure and persistent low motivation).<sup>608</sup> Second, studies have shown that classic hallucinogens, such as LSD and psilocybin, can be very effective in treating addiction.<sup>609</sup> Both substances proved to be safe and effective for overcoming addictions.<sup>610</sup> Specifically, studies have shown that high-dose LSD can be an efficient treatment for overcoming alcoholism, and psilocybin can be an efficient treatment for dependence to both nicotine and alcohol.<sup>611</sup>

Positive outcomes regarding the use of psychedelics are not restricted to treating diseases.<sup>612</sup> Some studies have shown that psilocybin can have beneficial effects on mental health.<sup>613</sup> The results of different studies suggest that these substances can enhance positive mood,<sup>614</sup> decrease feelings of social exclusion,<sup>615</sup> increase emotional empathy, which plays “a crucial role in moral and prosocial behavior,”<sup>616</sup> and modulate social cognition and treat its deficits.<sup>617</sup> They can also help to change, positively, the way in which people see reality, as Michael Pollan has argued.<sup>618</sup> They can, as comedian Reggie Watts said, make a person gain a lot of insight about “the way [he or she] see[s] reality.”<sup>619</sup> It has also been shown that people who consume psychedelics become more environmentally friendly.<sup>620</sup> Among other things, there is proof of better ecological behavior, such as conserving water, recycling, and other environmentally friendly activities when people use these substances.<sup>621</sup>

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607. *Id.* at 675.

608. For a deeper explanation of anhedonia *see, e.g.*, Philip Gorwood, *Neurobiological Mechanisms of Anhedonia*, 10 *DIALOGUES IN CLINICAL NEUROSCIENCE* 291 (2008)

609. *See* Lewis, *supra* note 571

610. *Id.*

611. Michael P. Bogenschutz & Matthew W. Johnson, *Classic Hallucinogens in the Treatment of Addictions*, 64 *PROGRESS IN NEURO-PSYCHOPHARMACOLOGY & BIOLOGICAL PSYCHIATRY* 250 (2016).

612. Rainer Kraehenmann et al., *Psilocybin-Induced Decrease in Amygdala Reactivity Correlates With Enhanced Positive Mood in Volunteers*, 78 *BIOLOGICAL PSYCHIATRY* 572 (2014).

613. *Id.*

614. *Id.*

615. Katrin H. Preller et al., *Effects of Serotonin 2A/1A Receptor Stimulation on Social Exclusion Processing*, 113 *PROCEEDINGS NAT'L ACAD. SCI.*, 5119 (2016).

616. Thomas Pokorny et al., *Effect of Psilocybin on Empathy and Moral Decision-Making*, 20 *INT'L J. NEUROPSYCHOPHARMACOLOGY* 747, 748 (2017).

617. K. H. Preller et al., *The Effect of 5-HT<sub>2A/1a</sub> Agonist Treatment on Social Cognition, Empathy, and Social Decision-Making*, 30 *EUR. PSYCHIATRY* 22 (2015).

618. POLLAN, *supra* note 552, at 12.

619. *See* HAVE A GOOD TRIP, *supra* note 590.

620. Matthias Forstmann & Christina Sagioglou, *Lifetime Experience With (Classic) Psychedelics Predicts Pro-Environmental Behavior Through an Increase in Nature Relatedness*, 31 *J. PSYCHOPHARMACOLOGY* 975, 979 (2017).

621. *Id.*

The aforementioned evidence indicates that the use of psychedelics is, under certain circumstances, safe, effective, and beneficial.<sup>622</sup> Likewise, it has been proven that these substances are not linked to mental health problems and are not as addictive or toxic as the narratives of the prohibitionist regime have presented and argued.<sup>623</sup> It must be noted, nevertheless, that the effects of these drugs depend on where you take them, who you take them with, and what you want them to do.<sup>624</sup> Therefore, despite being extremely beneficial for many people, they might not be right for everyone in every setting.<sup>625</sup>

All of the mentioned benefits, as well as the ones that might exist but have not been found or studied, were forgotten for over 40 years due to the wrong images created by the law and the narratives that give meaning to them.<sup>626</sup> Many people, as a consequence of the demonization of psychoactive drugs, could not benefit from them. The studies about the benefits of these substances (as well as the ones regarding the safe ways to consume them) have also been delayed due to the stigmatization that illicit drugs have suffered since the war against them started.<sup>627</sup>

### C. *The “Gateway” Drug: Marijuana and Its Multiple Benefits*

Marijuana has been one of the most demonized substances since the beginning of the War on Drugs.<sup>628</sup> It has been accused, as pointed out before, of being a gateway drug that is harmful and addictive which leads people to use harder substances.<sup>629</sup> The reality is that this is not true; it is not a gateway drug, nor is it evil, as it has been depicted.<sup>630</sup>

Even though some heroin and cocaine users started off smoking marijuana, the great majority of cannabis users do not consume other substances.<sup>631</sup> As for the benefits, it has been proven that marijuana can improve a person’s mood by producing euphoric and pleasurable feelings.<sup>632</sup> With regard to cannabis’s medical utility, data from scientific studies shows

622. See *supra* Part V.B.

623. See Pål-Ørjan Johansen & Teri Suzanne Krebs, *Psychedelics Not Linked to Mental Health Problems or Suicidal Behavior: A Population Study*, 29 J. PSYCHOPHARMACOLOGY, 270, 277-78 (2015); see also HOT AIR, *supra* note 173, at 285; POLLAN, *supra* note 552, at 11.

624. See GROWN-UPS, *supra* note 73, at 10.

625. See *id.*

626. See *supra* Part V.B.

627. See GROWN-UPS, *supra* note 73, at 6-7.

628. See Adam Rathge, *Pondering Pot: Marijuana’s History and the Future of the War on Drugs*, ORG. AM. HISTORIANS, <https://www.oah.org/tah/issues/2015/august/pondering-pot> (last visited Oct. 29, 2022).

629. See GROWN-UPS, *supra* note 73, at 7.

630. *Id.* at 8.

631. *Id.*

632. *Id.*

that it has several medical benefits.<sup>633</sup> It has been an effective treatment for improving appetite and diminishing pain for people living with HIV,<sup>634</sup> it plays a substantial role in the relief of chronic and neuropathic pain,<sup>635</sup> it can help a person lose weight because its “consumption reduces energy storage and increases metabolic rates,”<sup>636</sup> which reverses the impact on body mass, it reduces insomnia and helps to treat certain sleep disorders,<sup>637</sup> and it is known to be a very good muscle relaxant,<sup>638</sup> among other benefits.

Some foreign countries and U.S. states have recently legalized the medical use of marijuana, as well as its recreational consumption (Uruguay and Canada, for example).<sup>639</sup> Nonetheless, the wrong images of the prohibitionist regime have deprived many people in those countries, for many years, of the benefits mentioned in this section.<sup>640</sup> Also, the images and narratives still prevent people from realizing positive outcomes today since, in the great majority of countries, marijuana is still forbidden for both medical and recreational use.<sup>641</sup>

The former cases are only some of the examples in which illicit drugs have proven that, in certain occasions, when used appropriately, they can improve the wellbeing of people.<sup>642</sup> Those benefits have been deprived due to the images and narratives shaped by the War on Drugs and the international drug control regime.<sup>643</sup>

#### CONCLUSION

There are certain psychoactive substances that have been demonized, have a terrible image, are not tolerated, and whose consumers are strongly discriminated against and stigmatized.<sup>644</sup> Also, the consumption of other substances is tolerated and accepted as a part of day-to-day social life in the majority of countries, and their users do not, in most cases, face

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633. *Id.* at 6.

634. Emily Woolridge et al., *Cannabis Use in HIV for Pain and Other Medical Symptoms*, 29 J. PAIN & SYMPTOM MGMT. 358 (2005).

635. GROWN-UPS, *supra* note 73, at 6.

636. Thomas M. Clark et al., *Theoretical Explanation for Reduced Body Mass Index and Obesity Rates in Cannabis Users*, 3.1 CANNABIS & CANNABINOID RES. 259, 262 (2018).

637. Kimberly A. Babson et al., *Cannabis, Cannabinoids, and Sleep: A Review of the Literature*, 19 CURR PSYCHIATRY REP. 22 (2017).

638. Peter Grinspoon, *Medical Marijuana*, HARV. HEALTH PUB. (Apr. 10, 2020), <https://www.health.harvard.edu/blog/medical-marijuana-2018011513085>.

639. *UN Commission Reclassifies Cannabis, Yet Still Considered Harmful*, UN NEWS (Dec. 2, 2020), <https://news.un.org/en/story/2020/12/1079132> [hereinafter *UN Reclassifies Cannabis*].

640. GROWN-UPS, *supra* note 73, at 7.

641. *Id.* at 7, 13.

642. POLLAN, *supra* note 552, at 11.

643. GROWN-UPS, *supra* note 73, at 19.

644. *See supra* Part I.



discrimination.<sup>645</sup> Those images and narratives were formed on the basis of a specific body of law; namely, the international drug control regime started to prohibit the production, trade and consumption of certain psychoactive substances.<sup>646</sup> Public opinion regarding different substances has not always been the same.<sup>647</sup> It has been shaped by the law and the narratives that give meaning to it.<sup>648</sup> The law has shaped an ethical border between right and wrong substances, and the boundaries created have served as gatekeepers of the current social order.

Those divisions are inaccurate. Contrary to what the legislature has codified, there is no evidence to support the claim that illegal substances are evil or more addictive or harmful than the ones that are tolerated and permitted.<sup>649</sup> On the contrary, there seem to be other factors that determine addiction, and the substances forbidden are not the ones that necessarily do more harm to both individuals and society.<sup>650</sup> Those misconceptions and the confusion that they generate have had a terrible impact on society.<sup>651</sup> They have produced terrible consequences and they also deprived people of benefits that could be gained from some substances, so long as they are consumed in safe spaces.<sup>652</sup>

Recent drug policy reform efforts, however, do not address the issue adequately. The main changes on the laws that prohibit drugs continue with the current division between right and wrong substances, but just add some to the ones that are accepted while leaving other ones behind. That is the case with respect to the medical and recreational cannabis reforms in Colombia, Mexico, Uruguay, Canada, and some U.S. states, among others.<sup>653</sup>

Current drug reform is mainly focused on extending prohibition, despite the legalization of some substances such as cannabis, because many drugs still remain marginalized.<sup>654</sup> These types of reforms are still perpetuating the wrong belief—that there are substances that are bad per se and addictive, while others, such as marijuana, which are not.<sup>655</sup> This system

645. See *supra* Part I.

646. See *supra* Part I.B.

647. See *supra* Part I.

648. Cover, *supra* note 1, at 4-5.

649. See *Development*, *supra* note 347, at 1050 fig.1.; *Drug Harms in the UK*, *supra* note 386, at 1561 fig.2.

650. See MATÉ, *supra* note 398, at 160; *Development*, *supra* note 347, at 1050 fig.1.; *Drug Harms in the UK*, *supra* note 386, at 1561 fig.2.

651. See generally *supra* Part IV.

652. See generally Parts IV-V.

653. See *UN Reclassifies Cannabis*, *supra* note 639.

654. Stuart Taylor et al., *Prohibition, Privilege and the Drug Apartheid: The Failure of Drug Policy Reform to Address the Underlying Fallacies of Drug Prohibition*, 16 *CRIMINOLOGY & CRIM. JUST.* 452, 453 (2016).

655. *Id.* at 453, 455.

has three main problems. First, it preserves the current drug apartheid system, as it has been called by Ayres, Taylor and Buchanan, by classifying substances as good or bad.<sup>656</sup> This does nothing to change the discrimination and stigmatization of both users and substances; it merely updates the list. Second, it does not address the major concern that it aims to solve: preserving public health and avoiding the creation of harm.<sup>657</sup> On the contrary, it continues to contribute to it by preventing responsible consumption.<sup>658</sup> Third, it continues to deprive people of some benefits of the substances that are still stigmatized.<sup>659</sup>

Policy reforms, therefore, should not be focused on categorically restricting the consumption of specific substances, but instead on trying to decrease and treat problematic consumption of *any substance*. There is nothing inherently bad about using drugs (any of them) if such use is not problematic at all. The law, as well as the efforts to reform it, need to stop discriminating against and stigmatizing the substances and their users.

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656. *Id.* at 452, 453.

657. *See id.* at 459-60.

658. *See supra* Part IV.C.

659. *See supra* Part V.