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Would “Hamsterdam” Work? Drug Depenalization in The Wire and in Real Life

John Bronsteen†

ABSTRACT
The television show The Wire depicts a plan called “Hamsterdam” in which police let people sell drugs in isolated places, and only those places, without fear of arrest. Based on limited but decent empirical evidence, we can make educated guesses about what would happen if that were tried in real life. Indeed, Swiss police tried something remarkably similar in the 1980s. More generally, the results of various forms of drug legalization, depenalization, and decriminalization in Europe—such as in Portugal, which has transferred the state’s method of dealing with drug use (including heroin and cocaine) from the criminal justice system to a civil administrative system since 2001—shed light on the likely strengths and weaknesses of Hamsterdam-like efforts. The Wire seems to get a lot right, including some of Hamsterdam’s successes and Hamsterdam’s political unsustainability. Unfortunately, The Wire might actually understate how hard it would be, even if there were no political impediments, to make sweeping improvements in real-world drug policy via Hamsterdam-like efforts.

INTRODUCTION
Drugs have been a core concern of American law for at least the past half-century.¹ During that time, drug use and the “war on drugs” have played central roles in the politics, culture, and public policy of this nation, as well as in the daily lives of millions of its people.

Still, millions of others are fortunate enough not to have been affected directly by drugs or the drug war.² If neither they nor their close

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† Georgia Reithal Professor of Law, Loyola University Chicago School of Law.

¹ I will use the word “drugs” in this Article as a shorthand for illicit drugs like heroin, cocaine, and usually marijuana—as distinguished from therapeutic drugs like ibuprofen (when those therapeutic drugs are used legally) or legal recreational drugs like alcohol and tobacco.

² In particular, I have in mind “hard drugs” like cocaine and heroin. The points I make in this Article relate to marijuana as well, and indeed the arguments for more lenient policies are stronger in the case of marijuana because its effects are less harmful. Moreover, recent state-level legalization policies in the United States should ultimately create fertile ground for study of how best to deal with that drug. Unfortunately, those efforts are so recent that it is too early to study their effects meaningfully, so they are not my focus here.
friends or relatives use drugs, much less are addicted to drugs, then they may not have given much thought to the issue. Those people often vote in elections or otherwise participate in the civic life of their community, so their understanding of the drug issue matters.

At least some of those people surely had their awareness raised by the television show *The Wire.* Although *The Wire* was far from the most popular show of its day, it has nonetheless been viewed by millions of people, and is perhaps the most critically acclaimed show of all time. *The Wire* depicts the war on drugs in Baltimore, Maryland in a manner that is, at once, relentlessly realistic and thrillingly dramatic.

*The Wire* unflinchingly depicts the violence and tragedy associated with drugs in Baltimore. The clear implication is that our nation’s drug policies are failing. They are contributing to, or at a minimum are not preventing, both widespread drug addiction and violence.

About halfway through the show’s five seasons, the show goes beyond that implication and makes the point explicit. It does so by introducing a character named Bunny Colvin, a police commander who tries to improve upon the status quo by choosing not to enforce drug laws in certain areas of Baltimore that come to be known as “Hamsterdam.”

This strategy, albeit not a panacea, works strikingly well in the fictional world of *The Wire.* It reduces violence and improves life in areas of Baltimore that were previously ravaged by rival drug gangs. But as is so common in *The Wire,* Colvin’s idealistic vision ultimately fails due to others’ ignorance and narrow self-interest. Politicians portray Colvin’s effort negatively for political gain, and this leads to the end of Hamsterdam and the return of violence to the streets.

It is hard to watch *The Wire* without wondering whether Colvin’s idealistic vision could work in real life, especially if somehow the political will could be summoned to pursue it. Is *The Wire* right that a carefully crafted scheme of depenalization—i.e., non-enforcement of the drug laws—could dramatically reduce violence without greatly increasing drug use?

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4 See, e.g., McMillian, supra note 3, at 851 (“The Wire is the greatest television series of all-time.”).
In this Article, I will take up that question. In Part I, I will discuss the treatment of this issue in The Wire and will briefly note the significance of fiction for real-world understandings of law and policy. In Part II, I will discuss how certain countries other than the United States—namely, the Netherlands, Switzerland, and Portugal—have tried to combat drug problems via policies that fall in between legalization and zero-tolerance. I will discuss the lessons we can learn from those other countries’ experiences and assess whether Hamsterdam or alternative efforts would likely be successful.

I. The Wire

My point of departure will be The Wire itself. I will first briefly discuss why fiction can be valuable for thinking about law and policy, and then sketch out the show’s treatment of drug depenalization.

A. Why Fiction?

Fictional stories—whether they are in books, movies, TV shows, or other forms—often serve the purpose of entertainment. In that vein, they are like crossword puzzles, board games, or anything else that is intended solely or primarily to be consumed for enjoyment.

But fictional stories can also be much more than that. They can teach us things about our own lives and the lives of others, and they can raise our awareness of issues we had overlooked. In many cases, such stories might even be the most effective way of educating the public about law and policy. For one thing, people may be more willing to devote their time to fictional stories than to sources of non-fictional information due to the stories’ drama and excitement. And for another thing, stories inherently teach lessons effectively because they show how law and policy play out in real life, under circumstances that are at least somewhat relatable.5

This is especially valuable when the fiction’s creators have spent years educating themselves about the reality they are depicting. The Wire is not a documentary, but it is nonetheless the product of careful study of the drug trade and the drug war on the streets of Baltimore.6

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5 McMillian, supra note 3, at 852–53 (“Stories are powerful teaching tools because they marry information (knowledge) and context (application). By observing how the power of law affects characters whom they have come to know and care about, viewers move beyond the four corners of theory to the more dynamic and affecting experience of seeing law play out in a way that is personally meaningful to them. Through this humanizing process of putting a name and a face on complex legal problems, film and television force a greater contemplation of the potential effects of legal decisions in the real world. . . .”).

By bringing a depiction of that reality to millions of viewers, the show spreads the knowledge its creators gained.

That knowledge entitles the creators to be taken seriously when they propose a solution to the grievous problems they portray. Let us now turn to their proposal.

B. Hamsterdam

The Wire is about Baltimore’s drug dealers, its drug buyers, and the police who try to stop the drug trade. Among the many real-life tragedies portrayed in the series, perhaps the most horrifying is the violence.

This violence primarily involves the efforts of drug gangs to keep or acquire turf for drug sales by menacing or killing members of rival gangs. But it also involves the police, who use excessive and unnecessary force in many interactions with the young men they encounter on the streets.

In Season Three, one character contemplates how to stem that violence. Bunny Colvin is the police officer in charge of Baltimore’s Western District, and as he nears retirement, he decides to try an experiment aimed at solving one of the core problems of the war on drugs. Specifically, the drug trade ruins neighborhoods by bringing its violence and addiction there. The police cannot solve this problem by simple arrests because the problem is too large, the criminals’ evasion techniques are too sophisticated, and there is too strong an incentive for the crime to continue.

So Colvin hatches a plan to drag the drug trade away from population centers and into a place where it will go unnoticed by those who want no part of it. In addition, he supplies that place with protection so that the violence is reduced.

Colvin creates three “free zones” where his police officers will be instructed not to arrest anyone for buying or selling drugs. The zones are in “abandoned areas of the Western District—‘away from the residential streets, away from commercial areas, away from schools.’” Colvin informs the mid-level drug dealers that if they confine their sales to

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7 As cited in prior footnotes, Lance McMillian has written an excellent account of Hamsterdam in a law review article. McMillian, supra note 3. He explains the plotline in far more detail than I do, and I recommend his work to interested readers. The difference between his article and mine is that he discusses whether Hamsterdam could work in real life by considering the theory behind the drug trade, whereas I discuss it by comparing Hamsterdam to real-world efforts to legalize, decriminalize, and depenalize drugs. Perhaps for that reason, we reach different conclusions: He is far more optimistic than I am about how well something like Hamsterdam would work in real life.

8 McMillian, supra note 3, at 858–59 (quoting The Wire: Dead Soldiers (HBO television broadcast Oct. 3, 2004) (Season Three, Episode Three)).
these free zones, then the police will leave them alone. But if they con-
tinue to sell outside the zones, then the police will brutalize them.9

After some initial suspicion and unwillingness, the drug dealers
comply. The free zones become known on the streets as “Hamsterdam,”
an inaccurate reference to the Dutch city of Amsterdam, where mariju-
ana is famously sold in coffee shops without police interference.

Colvin’s idea works. Once the drug trade moves away from residen-
tial and commercial neighborhoods, life in those neighborhoods becomes
safer and more vibrant. This is possible because Hamsterdam repre-
sents a windfall for the drug dealers, whose costs decrease: They no
longer lose merchandise to drug busts, and they no longer need to kill
rivals or to worry about being killed by them in an endless effort to gain
and retain turf for drug sales.

This success is reflected in the police statistics on crime, which im-
prove markedly.10 Buoyed by the progress, Colvin expands his ambi-
tions by bringing health-care workers into Hamsterdam. As one of those
workers says,

From a public health perspective, there are amazing things hap-
pening in the free zones: needle exchanges, blood tests, condom
distribution. Most of all, we’re interacting with an adverse com-
munity that is largely elusive. We’re even talking some of these
people into drug treatment.11

But The Wire does not depict Colvin’s solution as a panacea. There
is tremendous sorrow and hopelessness in Hamsterdam, and we even
see drug-induced death. Hamsterdam is described as “hell.”12

Even so, we are left with the impression that Hamsterdam has im-
proved life in Baltimore on the whole, perhaps by a large amount. After
seeing the ravages of the drug trade and the drug war on communities,
we now see those communities benefiting from the absence of that trade
and that war.13 In images that are jarring in how much they differ from
the show’s typical depiction of drug-ravaged neighborhoods, we see the

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9 The Wire: Straight and True (HBO television broadcast Oct. 17, 2004) (Season Three, Epi-
sode Five) (“I have over 200 sworn personnel and I will free them all up to brutalize every one of
you they can. If you’re on a corner in my district, it . . . will be some Biblical shit that happens to
you on the way into that jail wagon. You understand? We will not be playing by any rules that you
recognize.”); McMillian, supra note 3, at 859 n.32.

10 The Wire: Moral Midgetry (HBO television broadcast Nov. 14, 2004) (Season Three, Episode
Eight); McMillian, supra note 3, at 861.

11 The Wire: Middle Ground (HBO television broadcast Dec. 12, 2004) (Season Three, Episode
Eleven); McMillian, supra note 3, at 861 n.40.

12 The Wire: Moral Midgetry, supra note 10 (Season Three, Episode Eight); McMillian, supra
note 3, at 862.

Six).
newly drug-free communities filled with people of all ages pleasantly walking down safe streets, gardening, dribbling basketballs, hanging clothes out to dry, selling lemonade, and generally enjoying their lives free of fear.\(^{14}\)

Unfortunately, the improved crime statistics catch the eye of the deputy police commissioner, who learns about Hamsterdam. Eventually, a politician learns of it too and exploits it for political gain, creating a hailstorm of public outrage about unauthorized drug legalization. Under overwhelming pressure, the mayor calls for an end to Hamsterdam, and this end is effected via mass arrests and ultimately demolition.\(^{15}\)

It is clear that the lesson we are meant to take from this is that Hamsterdam was a good thing that failed because of certain individuals’ narrow self-interest and many people’s ideological small-mindedness and resistance to creative, pragmatic solutions. The Wire presents the idea that if only society were willing to tolerate a Hamsterdam-style depenalization scheme, the benefits would greatly exceed the costs (if indeed there were any costs relative to the status quo).\(^{16}\)

II. DRUG LEGALIZATION, DEPENALIZATION, AND DECRIMINALIZATION EFFORTS IN REAL LIFE

Would Hamsterdam work in real life? In my view, the best way to make an informed guess is to consider the similar (to one degree or another) experiments that have actually been tried by law enforcement in various countries.

Let me note at the outset that some people, on both sides of the policy debate, view the drug issue as a moral one. On one side, some consider drug use to be inherently wrong and believe it should not be tolerated regardless of the costs of such prohibition. Others believe, oppositely, that drug use is a choice that people should be free to make, regardless of the costs (primarily to themselves, but also indirectly to others) of allowing them to make it. My focus here is not on either of these sorts of views, but rather on the question of what policy would be best for overall well-being. (This might be thought of as a utilitarian, rather than deontic, approach.) Whatever moral beliefs they may have, I suspect that many people would consider it desirable to reduce drug-

\(^{14}\) Id.

\(^{15}\) The Wire: Mission Accomplished (HBO television broadcast Dec. 19, 2004) (Season Three, Episode Twelve); McMillian, supra note 3, at 863–64.

\(^{16}\) Although Hamsterdam is described as hell, Colvin says that this is not really a harm because the drug users there “ain’t no worse off than they were when they were scattered all over the map. Now they’re just in one place, that’s all.” The Wire: Moral Midgetry, supra note 10 (Season Three, Episode Eight); McMillian, supra note 3, at 862.
related violence and the sort of addiction that typically ruins the lives of the individual and others around her or him.

Now let us turn to a point about terminology, so as to differentiate various types of approaches to drug policy. The “war on drugs” in the United States embodies somewhat of a zero-tolerance policy, at least with respect to the “hardest” drugs, such as heroin. Such drugs are criminalized, and the criminal laws are enforced vigorously with the primary goals of retribution, deterrence, and incapacitation.

An alternative is to view drugs as a public health problem rather than as a crime problem. But doing so can take many different forms. At the extreme, a nation could simply legalize drugs such as heroin, cocaine, and marijuana, and then treat them the way the United States currently treats alcohol and tobacco. In that case, people could legally buy heroin at a store and use it without breaking any law. Such an approach may be labeled “legalization.”

Legalization would probably have meaningful benefits, such as eliminating much of the violence perpetrated by drug gangs to defend their turf. There are no comparable gangs for alcohol or tobacco because those are sold legally in stores, just as drugs would be in a legalization framework. However, legalization might dramatically increase the use of drugs like heroin and cocaine. Due to this concern, policy options have emerged that fall somewhere between legalization and zero-tolerance criminalization.

Hamsterdam is one such example. Although the sale and use of drugs were still crimes on the books, actors in the penal system did not enforce those laws. As a result, there was crime without punishment. The term for this is “depenalization.”

Yet another option is to retain the legislative prohibition on drug use, and to enforce that prohibition, but to make the prohibition non-criminal in nature. Portugal has done this, as described in Part II of this Article. This is called “decriminalization.”

By considering how each of these practices has worked, we can get a sense of their relative strengths and weaknesses and thereby assess

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17 As described below, I will be using the terms “legalization,” “decriminalization,” and “depenalization” as those terms are defined in Caitlin Elizabeth Hughes & Alex Stevens, What Can We Learn from the Portuguese Decriminalization of Illicit Drugs?, 50 BRIT. J. CRIMINOLOGY 999, 999 (2010).

18 Id. (defining legalization as “the complete removal of sanctions, making a certain behaviour legal and applying no criminal or administrative penalty”). Note that the approach in Amsterdam, described below, fits this definition in the sense that it involves “the complete removal of sanctions.” As will be explained, it constitutes “de facto legalization” even though there is still a national statute criminalizing drug use there.

19 Id.

20 Id.
whether Hamsterdam or some alternative holds the most promise here in the United States.

A. De Facto Legalization in the Netherlands: Amsterdam vs. Hamsterdam

Perhaps the world’s most famous example of a drug-policy alternative to zero-tolerance criminalization is the sale of marijuana in coffee shops in Amsterdam, the Netherlands. Indeed, so famous is that policy that the fictional drug dealers on the streets of Baltimore in The Wire tried (albeit imperfectly) to name Bunny Colvin’s scheme after that Dutch city.

Hamsterdam may trace its roots to Amsterdam, but how did Amsterdam’s lenient drug policy come about? It began with the enactment of a national statute in the Netherlands called the revised Opium Act of 1976. This 1976 revision of the Act differentiated between heroin and cocaine on the one hand (both of which it deemed “unacceptable risks”), and cannabis on the other hand (which it deemed an “acceptable risk”). Under the 1976 statute, selling or possessing cannabis was still a crime, but the maximum penalty for an amount of thirty grams or less was only one month in jail. The thirty-gram threshold was meant to “allow a personal supply sufficient for two weeks that would also enable users to share some stuff with their friends.”

This is strange on its face. If the Dutch government considered small quantities of marijuana to be an “acceptable risk,” and if it wanted to allow a personal supply, then why did it write a law criminalizing possession of those small quantities of marijuana? The answer may be that the Netherlands had signed an international treaty in 1961 compelling it to criminalize such drug possession. Faced with that obstacle, but still wanting to allow the sale of marijuana for personal use,

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23 Id.


25 Arising out of “an effort to replace all existing treaties with a single one,” that treaty (the United Nations’ Single Convention of New York) “is still the primary legal document in the international cooperative effort against the so-called dangerous drugs.” Jos Silvis, Enforcing Drug Laws in the Netherlands, in BETWEEN PROHIBITION AND LEGALIZATION: THE DUTCH EXPERIMENT IN DRUG POLICY 41, 42 (Ed Leuw & I. Haen Marshall eds., 1994); see also Tom Blom & Hans van Mastrigt, The Future of the Dutch Model in the Context of the War on Drugs, in BETWEEN PROHIBITION AND LEGALIZATION: THE DUTCH EXPERIMENT IN DRUG POLICY 255, 255 (Ed Leuw & I. Haen Marshall eds., 1994); MACCOUN & REUTER, supra note 22, at 243–44. The possibility that this treaty influenced the drafting of the Netherlands’ 1961 domestic statute is pointed out by Silvis, supra, at 48 (noting that the treaty “demand[s] criminalization of possession . . . of soft
the Netherlands capitalized on its system of criminal law enforcement. That system uses formal guidelines to interpret how (and even whether) to enforce the statutory prohibitions on behavior:

[T]he Dutch have committed themselves to the principle of expediency (or opportunity) which formally allows discretionary powers to the police and the prosecution. The use of this principle of expediency is not limited to the necessity of setting priorities in order to cope with scarcity of resources. In fact the main function of the principle of expediency is to prevent prosecutions that are not in the best public interest.\textsuperscript{26}

Thus, the Dutch supplemented their 1976 statute with formal guidelines instructing the police not to arrest people for buying, selling, using, or possessing less than thirty grams of marijuana, and in particular to allow such transactions in coffee shops.\textsuperscript{27}

This may seem similar to Hamsterdam—only with respect to marijuana, of course\textsuperscript{28}—but it is in fact very different. The apparent similarity is that in both cases, the statutory law criminalizes drug sales, but the police choose to allow those sales nonetheless. Such non-enforcement is typically labeled depenalization, and that is indeed what Hamsterdam exemplified. But the crucial difference in the Netherlands is that the police’s non-enforcement was formalized in “officially published guidelines on how to deal with certain cases under specified conditions.”\textsuperscript{29} This enabled the Dutch to claim (based on their statute) that they were technically complying with the 1961 treaty, while actually treating the sale and use of marijuana the same way that it would be treated if it were legal.

Hamsterdam ended when people learned about it, but everyone knows about Amsterdam, and its policies remain.\textsuperscript{30} And the differences do not end there. Even while Hamsterdam existed, its drug transactions took place under a cloud of uncertainty because the police who permitted those transactions were acting without official, public authorization of the legal system. By contrast, the formal Dutch guidelines provided such authorization, and the way they were followed made it clear to everyone that the coffee shop sales were allowed. Even the 1976 statute

\textsuperscript{26} Silvis, \textit{supra} note 25, at 44 (emphasis added).
\textsuperscript{27} MACCOUN & REUTER, \textit{supra} note 22, at 246–47.
\textsuperscript{28} Hamsterdam depenalized all drugs, whereas Amsterdam differentiates between soft drugs like marijuana and hard drugs like cocaine and heroin.
\textsuperscript{29} Silvis, \textit{supra} note 25, at 44.
\textsuperscript{30} Even Amsterdam has somewhat scaled back its tolerant approach in recent years. \textit{See} van Ooyen-Houben & Kleemans, \textit{supra} note 21, at 167–73. However, it has not reversed that tolerant approach entirely, \textit{id.} at 173, or eliminated the coffee shops, \textit{id.} at 168 Tbl. 2.
that says such sales are crimes is accurately understood to have been written for the purpose of letting the sales happen rather than stopping them.

For these reasons, scholars have labeled Amsterdam’s approach “de facto legalization,”\(^{31}\) which contrasts with Hamsterdam’s depenalization. The label of legalization makes sense, even though such a label would seem to be ruled out automatically by the fact that there is a statute on the books saying that the behavior is a crime. The best way to think of this is perhaps that in the Dutch legal system, statutory criminality is not sufficient to make something meaningfully illegal.

In any event, what matters for our purposes is whether Amsterdam has been a policy success. In particular, has the number of drug users increased there? That issue—more users—is the signature concern with legalization. Since legalization solves many of the problems faced by drug policy,\(^{32}\) the main reluctance to legalize drugs is the fear that doing so will bring drugs into the lives of many more people. After all, one of the core purposes of the criminal law is deterrence, so it is intuitive that eliminating criminal sanctions and allowing drugs to be sold in coffee shops would undo that deterrence.

It is not easy to interpret the evidence on how Amsterdam’s coffee shops affected the number of drug users there. As a result, contradictory claims have been made.\(^{33}\) But a very careful analysis has been performed by Robert MacCoun and Peter Reuter.\(^{34}\) They make a convincing case that the 1976 depenalization “had little effect if any on levels of use during the first 7 years of the new regime,”\(^ {35}\) but that in the 1980s the “progression from depenalization to de facto legalization” (as the formal guidelines took hold and everyone learned that buying marijuana really was legal in the coffee shops) correlated with “consistent[ and sharp[ ]] increases in the number of marijuana users.\(^{36}\) For example, there is survey evidence that the percentage of 18–20 year-olds who had used marijuana increased “from 15 percent in 1984 to 44 percent in 1996.”\(^ {37}\)

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\(^{31}\) MacCoun & Reuter, supra note 22, at 246.


\(^{33}\) E.g., MacCoun & Reuter, supra note 22, at 246 (quoting accounts that say, respectively, that the Dutch policy is responsible for more and less drug use than exists with stricter policies).

\(^{34}\) Indeed, MacCoun and Reuter’s book Drug War Heresies has been called “[t]he most comprehensive synthetic review of the impacts of the decriminalization of illicit drugs.” Hughes & Stevens, supra note 17, at 1000.

\(^{35}\) MacCoun & Reuter, supra note 22, at 256.

\(^{36}\) Id. at 257.

\(^{37}\) Id.
To a degree, those numbers may be misleading because other countries experienced “similar large increases” in usage rates to those in the Netherlands from 1992 to 1996. However, during the period from 1984 to 1992, the rise in usage rates among Dutch youth was almost unique among countries whose rates have been studied. Whereas rates were “flat or declining . . . during this period in Catalunya, Stockholm, Hamburg, . . . Denmark . . . , Germany as a whole, . . . Canada . . . , and Australia,” they were increasing in the Netherlands. This left the Netherlands with rates of marijuana use that were “somewhat higher than those of many of its neighbors” (albeit still “somewhat lower than those in the United States”). Amsterdam has higher rates than elsewhere in the Netherlands—rates similar to those in the U.S.

So the 1976 statute itself did not immediately result in more people using marijuana, but after seven years, the policy of de facto legalization via the guidelines had “found concrete expression in the form of coffee shops” and had led to “the heightened salience and glamorization (in the youth-cultural sense) that results from widespread, highly visible promotion—in shop signs and advertisements but also in countercultural media ads, postcards, and posters.” This, in turn, caused a large spike in the number of users.

What can we learn from Amsterdam? It seems that when a drug can be bought and sold in coffee shops—that is, bought and sold legally for all intents and purposes—many more people (especially young adults) will try using the drug. That is a crucial lesson because it complicates matters for those who make drug policy, especially policy regarding “hard” drugs such as heroin and cocaine. Legalization cures many ills, so it would be a promising approach if it did not increase the

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39 MACOUN & REUTER, supra note 22, at 258.

40 Id. at 256.

41 Id.

42 Id. at 260 (quoting DIRK J. KORF, DUTCH TREAT: FORMAL CONTROL AND ILICIT DRUG USE IN THE NETHERLANDS (1995)).

43 Id.; see also id. at 303, 339 (“[T]here was . . . a sharp and sustained increase in marijuana prevalence from 1984 to 1992, plausibly attributable to increased access and promotion through the coffeeshops.”).

44 A note of caution is warranted. Although the overwhelming weight of the evidence does seem to point in the direction of a causal link between Dutch de facto legalization and increased marijuana use in the Netherlands, one can never be certain in drawing causal inferences from data. Indeed, if one wanted to argue against such an inference here, one could point to the fact that increases in drug use in other countries “have occurred . . . despite very different policies.” Id. at 263.

45 See id. at 304.
number of drug users. (It might be promising anyway, but only if such an increase were the lesser of the evils.\textsuperscript{46}) Since it does appear to increase the number of users, however, we may want to seek alternatives in the hope of reaping some of legalization’s rewards without its costs.

The most obvious alternative is Hamsterdam. One could very easily draw the following lesson from the experience of the Netherlands: Depenalization created benefits without major costs, but such costs (namely, increased usage rates) arrived when depenalization turned into de facto legalization. Specifically, when the Netherlands began its depenalization policy in 1976—and before that policy led to widespread famous selling of marijuana in coffee shops—it “significantly reduced the monetary and human costs of incarcerating cannabis offenders with no apparent effect on levels of use.”\textsuperscript{47}

Hamsterdam aims to achieve those same results via depenalization without de facto legalization. In Hamsterdam, there were no coffee shops, and there was no commercialization in any respect. Although buyers were not arrested there, the sense of express societal approval remained absent. In \textit{The Wire}, this approach seemed optimal for achieving benefits without making it likely that usage would spike. Is Hamsterdam, then, the best answer? That is the question to which we now turn.

\section*{B. Depenalization in Switzerland: The Real-Life Hamsterdam}

Perhaps surprisingly, we need not consider Hamsterdam solely in theory because an almost identical experiment was tried in real life—in Zurich, Switzerland in the late 1980s. Like the city of Baltimore that is depicted (realistically) in \textit{The Wire}, Zurich was a place with very strict drug enforcement.\textsuperscript{48} And as in \textit{The Wire}, the harms from that strict approach led local officials to carve out an exception within their jurisdiction.

One relevant difference between Zurich and Baltimore was that the former was “a city lacking slums,”\textsuperscript{49} which made it a challenge to find a place to put the depenalization zone. Local officials chose a park named the Platzspitz “behind the main train station in Zurich.”\textsuperscript{50} This location

\begin{footnotes}
\footnotetext{46}{For an argument to that effect, see, \textit{e.g.}, Jeffrey A. Miron & Zwiebel, \textit{The Economic Case Against Drug Prohibition}, 9 J. ECON. PERSP. 175 (1995).}
\footnotetext{47}{\textsc{MacCoun} \& \textsc{Reuter}, \textit{supra} note 22, at 261.}
\footnotetext{48}{\textit{E.g.}, Manuel Eisner, \textit{Policies Toward Open Drug Scenes and Street Crime: The Case of the City of Zürich}, 1 EUR. J. ON CRIM. POLY \& RES. 61, 61 (1992) ("[T]he attitude towards illegal drugs on a national level [in Switzerland] was always characterized by the political climate of repression.").}
\footnotetext{49}{\textsc{MacCoun} \& \textsc{Reuter}, \textit{supra} note 22, at 281.}
\footnotetext{50}{Eisner, \textit{supra} note 48, at 61.}
\end{footnotes}
was crucially different from Hamsterdam in that it was very close to upscale neighborhoods and easily accessible due to its proximity to the train hub. However, like Hamsterdam, the Platzspitz was not visible to the rest of the city: What it lacked in distance it made up for in sheer physical separation, as it was surrounded by water on three sides and a high wall on the fourth. In this way, it could remain just as hidden from view as was Hamsterdam.

Apart from its proximity to the train station and to the rest of the upscale, slumless city abutting it, perhaps the only important difference between the Platzspitz and Hamsterdam was that the former was created by the Zurich city council rather than by one ingenious police officer. But that fact did not change the experiment’s nature from a Hamsterdam-style depenalization to an Amsterdam-style de facto legalization. Like Hamsterdam and unlike Amsterdam, the Platzspitz was no coffee shop. It was “a Hieronymous Bosch vision of a drug hell.” (Picturing that description, one cannot help but be reminded of Hamsterdam, which looked just like that and indeed was itself pointedly described as “hell.” I do not know whether David Simon, the creator of The Wire, knew of the Platzspitz when he invented Hamsterdam.) And the fate of the Platzspitz, which we will come to in a moment, underscores its similarity to Hamsterdam’s depenalization approach and its difference from Amsterdam’s de facto legalization approach in that the latter derived stability and public acceptance from its essentially legal status.

The goal of a project like Hamsterdam or the Platzspitz is to get the benefits of legalization without the costs. And The Wire takes the position that this positive outcome is realistic, at least absent political blowback. In The Wire, Hamsterdam succeeds at dragging the ugliness of the drug war away from residential and commercial neighborhoods, reducing the incentives for violence, and providing users with health services. And it does not appear to increase the number of drug users, at least by any large amount, because it flies under the radar and is distinctly unappealing.

The results from the Platzspitz are uncertain, but they seem more mixed than the results of Hamsterdam. For one thing, the Platzspitz never flew under the radar. Dubbed “Needle Park,” it “became internationally famous because of mass-media reporting.” (The same would

51 MACCOUN & REUTER, supra note 22, at 281.
52 Id.
53 Id. at 282.
54 The Wire: Moral Midgetry, supra note 10 (Season Three, Episode Eight); McMillian, supra note 3, at 862.
55 Eisner, supra note 48, at 61.
now probably be true of Hamsterdam, even faster than it was on the show, in this age of smartphones and the resulting rapid transfer of information via photos and social media.) And as a result of that fame, along with its proximity to the main train station of a major city, thousands flocked there.\textsuperscript{56} As economists predict in cases of legalization,\textsuperscript{57} the Platzspitz caused the price of cocaine and heroin to plummet,\textsuperscript{58} which may have increased demand for those drugs.

There were crime problems as well:

The number of robberies and muggings almost doubled in the downtown areas around the Platzspitz as the population of addicts in the park expanded. . . . There had been a small number of gruesome homicides, apparently the result of battles between rival drug-dealing gangs, mostly from Eastern Europe and the Mideast.\textsuperscript{59}

Due to these problems, and especially the negative press coverage, the Zurich city government closed the park in early 1992, about five years after it opened.\textsuperscript{60}

It would be easy to conclude from this information that the Platzspitz was a failure. It ended quickly and ignominiously due to public outrage, just like Hamsterdam. And unlike Hamsterdam, it seems to have brought crime and violence to its surrounding neighborhoods. Also unlike Hamsterdam, it may well have increased drug use, in part by attracting worldwide attention. By this accounting, it would seem to have done exactly the opposite of what the Zurich authorities intended. Rather than keep the advantages of Amsterdam’s legalization approach while reducing the harm (i.e., wider drug use) of that approach, the Platzspitz seemed not to achieve the advantages that \textit{The Wire} and others attribute to legalization or depenalization (e.g., reduced crime and violence) while retaining the harm of those policies by attracting drug users via lower prices and shelter from arrest. In trying to be the best of both worlds, it was arguably the worst of both. And even if it had, despite appearances, improved people’s lives on the whole, it still could not be counted a success because, like Hamsterdam, it was terminated by virtue of being a public relations disaster. So the simple verdict would be that the Platzspitz was a failure.


\textsuperscript{57} E.g., Ilyana Kuziemko & Steven D. Levitt, \textit{An Empirical Analysis of Imprisoning Drug Offenders}, 88 J. PUB. ECON. 2043, 2047 (2004).

\textsuperscript{58} MACCOUN & REUTER, \textit{supra} note 22, at 282.

\textsuperscript{59} Id. at 284–85; see also Eisner, \textit{supra} note 48, at 68 Fig. 3.

\textsuperscript{60} MACCOUN & REUTER, \textit{supra} note 22, at 283.
The truth, however, is probably more complicated. For one thing, the Platzspitz shared Hamsterdam’s advantage of bringing public health officials to the place where the drug users now had to congregate. Although it is hard to measure all the benefits of that fact given the available data, such benefits were likely considerable. Indeed, one crucial measure of its success is that the rates of HIV fell.\textsuperscript{61} And for another thing, knowing that thousands of people bought drugs at the Platzspitz does not tell us whether drug use increased. It may be that the Platzspitz, like Hamsterdam, simply became the destination of choice for people who previously bought their drugs elsewhere. Similarly, the drug-related crime around the Platzspitz—which crime was not in residential neighborhoods but rather in “the underground shopping area adjacent to the train station”—may well have been displaced from alternative areas where it would otherwise have occurred.\textsuperscript{62} Indeed, given the low rates of crime in the Platzspitz, we cannot rule out the possibility that its existence actually decreased crime on the whole,\textsuperscript{63} just like Hamsterdam’s existence did. In fact, perhaps the greatest testament to the Platzspitz’s value was that when it closed, the resulting spread of drug-related problems meant that “the city was forced to allow a new zone of tolerance (never formalized) to operate in another, smaller area with few residents nearby.”\textsuperscript{64}

We may never be able to say with any confidence whether the Platzspitz was a failure (as is widely believed), a success (as seems possible), or something in between. Something in between seems most likely. Although it helped bring health officials together with drug users and probably reduced the spread of AIDS, it also does not seem to have reduced crime (and may have increased it) while very possibly increasing the number of drug users. At a minimum, it does not seem to have had the rousing success that Hamsterdam is depicted as having had before its demise.

If that is true, then we might draw the inference that \textit{The Wire} was perhaps too optimistic about the prospects for something like Hamsterdam to achieve the benefits that the show attributed to it. Instead of improving on Amsterdam, Zurich’s real-life Hamsterdam may well have been worse. If nothing else, we can be certain of one thing: It did not last.

We will need to look elsewhere, then, for an answer to the question of what might be the most promising avenue for a lasting improvement upon the tragic status quo that \textit{The Wire} depicts.

\begin{footnotesize}
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\item \textsuperscript{61} Grob, \textit{supra} note 56, at 57; \textsc{MacCoun \& Reuter}, \textit{supra} note 22, at 285.
\item \textsuperscript{62} \textsc{MacCoun \& Reuter}, \textit{supra} note 22, at 285.
\item \textsuperscript{63} \textit{Id.}
\item \textsuperscript{64} \textit{Id.} at 284.
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C. Decriminalization in Portugal: A More Lasting Success?

Using drugs is not a crime in Portugal. It is not a crime there to use marijuana, or to use cocaine, or to use heroin. Whereas Amsterdam’s coffee shops are a famous symbol of liberal drug policy, they sell only marijuana. And as we have seen, even Amsterdam operates under a national statute criminalizing marijuana, and only the police guidelines there make marijuana use de facto legal. In Portugal, by contrast, a national statute says that the use of any drug is not criminal behavior.

As stunning as Portugal’s drug policy may seem, it is equally confusing. For although using drugs is not a crime, it is nonetheless far from legal: It is an administrative offense for which one can receive a citation and face consequences. And those consequences are not a mere theoretical possibility: Portugal enforces its drug laws energetically.

This is a peculiar approach. One often thinks of a country as being either tough on drugs, like the United States and the United Kingdom are with respect to heroin, or else relatively soft like the Netherlands. Portugal’s system seems to stem from neither overarching philosophy.

Despite that, or perhaps because of it, Portugal’s system has had substantial success. Let us first discuss what exactly the law and policy are, and then consider their effects.

1. Portuguese drug law and policy

Before 2001, Portugal criminalized drug use, with the maximum penalty being one year in prison. Drug use was low there, but intravenous heroin use led to a large increase in the spread of several diseases including HIV/AIDS. In response, the Portuguese government commissioned a study of how to improve its drug policy to address this problem. The study, whose recommendations were adopted, recommended a bold new approach intended to “channel[] minor drug offenders into the drug treatment system.”

The first step in that strategy was to decriminalize drug use via a national statute, Law 30/2000. The possession of small amounts of heroin, cocaine, marijuana, and other drugs would be an administrative

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65 Hughes & Stevens, supra note 17, at 1002.
66 Id. at 1001; see also GLENN GREENWALD, CATO INSTITUTE, DRUG DECRIMINALIZATION IN PORTUGAL: LESSONS FOR CREATING FAIR AND SUCCESSFUL DRUG POLICIES 14 (2009), http://www .cato.org/pubs/wtpapers/greenwald_whitepaper.pdf [https://perma.cc/L2TB-RW7W].
68 Hughes & Stevens, supra note 17, at 1002.
69 GREENWALD, supra note 66, at 2; Woods, supra note 67, at 15.
offense handled by Commissions for the Dissuasion of Drug Addiction (CDTs).

Here is how it works. If you use drugs and get caught, the police confiscate the drugs and issue a citation requiring you to appear within seventy-two hours before a CDT. The CDT is a panel of three people who may well be lawyers, doctors, or social workers. That panel then tries to learn whether you are addicted to drugs. If so, it will probably recommend you receive treatment instead of sanctions. If not, it may impose community service or a fine. The panel’s purpose is to reduce drug use, so non-addicts receive disincentives and addicts receive help.

2. Does it work?

Portugal enacted its reforms in response to an epidemic of infectious diseases such as HIV/AIDS that were being spread by the use of heroin and other injectable drugs. The reforms were a huge success in addressing that problem: “[B]etween 2000 and 2008, the number of cases of HIV reduced among drug users from 907 to 267 and the number of cases of AIDS reduced from 506 to 108.”

Along the same lines, “[t]he proportion of deaths in which opiates were the main substance in Portugal has continued on an almost steady decline” from 1999 to 2008. Overall, many fewer people in Portugal died from drugs in the years immediately following the 2001 reforms than in the years immediately preceding them.

Perhaps the most intensely disputed effect is on the number of drug users. Opponents of lenient drug policies claim such policies will increase drug use (as has occurred in Amsterdam), whereas proponents of such policies know their goals will be advanced by claiming that the policies do not increase drug use. The most careful and reputable source addressing these issues gives the following conclusions. It appears that overall rates of drug use increased in Portugal after the 2001 decriminalization. However, such rates also increased a similar amount

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70 Hughes & Stevens, supra note 17, at 1002.
71 Woods, supra note 67, at 17.
72 Id. at 17; Hughes & Stevens, supra note 17, at 1002.
73 Hughes & Stevens, supra note 17, at 1002; cf. Greenwald, supra note 66, at 3.
74 Hughes & Stevens, supra note 17, at 1015. This is almost certainly not solely, or even primarily, attributable to the decriminalization but also in large part to the large-scale public health efforts Portugal engaged in to help drug users and reduce the spread of disease. Still, the depenalization was an integral part of the total reform effort.
75 Id. at 1014.
76 Woods, supra note 67, at 21; Hughes & Stevens, supra note 17, at 1015 Fig. 7.
77 That source is Hughes & Stevens, supra note 17.
78 Hughes & Stevens, supra note 17, at 1005; see also Greenwald, supra note 66, at 12.
in Spain and Italy during the same period, suggesting that the increase in Portugal may well not have been caused by the decriminalization. Moreover, Portugal experienced a decline in its number of problematic drug users, whereas Italy and Spain did not.

Portugal did not decriminalize the sale of drugs, nor did it legalize or even depenalize possession, so its reforms would not be expected to have diminished drug-related crime (other than to eliminate drug possession itself as a crime). And indeed, although Portuguese crime statistics are far from definitive, the best guess seems to be that crime was unaffected by the decriminalization.

The changes in Portugal since the decriminalization—not all of which (in particular, the first listed item below) are likely caused by it—have been summarized as follows:

- small increases in reported illicit drug use among adults;
- reduced illicit drug use among problematic drug users and adolescents, at least since 2003;
- reduced burden of drug offenders on the criminal justice system;
- increased uptake of drug treatment;
- reduction in opiate-related deaths and infectious diseases;
- increases in the amounts of drugs seized by the authorities;
- reductions in the retail prices of drugs.

All in all, it seems clear that the Portuguese decriminalization achieved its desired goals and dramatically improved upon the conditions before the decriminalization was enacted. It has been a lasting success as judged by what it was intended to achieve, namely a reduction in the spread of infectious diseases and a reduction in problematic drug use.

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79 European authorities define problematic drug use as “injecting drug use or long duration or regular use of opioids, cocaine and/or amphetamines.” Methods and Definitions, EUROPEAN MONITORING CENTRE FOR DRUGS AND DRUG ADDICTION (Mar. 20, 2012), http://www.emcdda.europa.eu/stats07/PDU/methods [https://perma.cc/7L3U-M4GX].

80 Hughes & Stevens, supra note 17, at 1006–08.

81 Woods, supra note 67, at 21.

82 See id. at 21–22; Hughes & Stevens, supra note 17, at 1010 (noting that the central police agencies “did not attribute any such changes to the decriminalization”).

83 Hughes & Stevens, supra note 17, at 1017. Please note that the bulleted list cited here is a direct quotation.
D. Lessons from the Real World

In *The Wire*, Hamsterdam’s depenalization approach reduced crime and drug-related violence, improved neighborhoods, connected drug users with public health officials, and did not seem to significantly increase drug use. Its one real failing was that it could not survive political backlash and therefore did not last.

The fate of the Platzspitz in Zurich—the real-life Hamsterdam—suggests that such a depiction may have been inaccurately rosy. The Platzspitz did have some similarities (good and bad) with Hamsterdam: It brought public health officials into contact with drug users, but it failed to survive for long due to political backlash. The difference is that Switzerland’s real-life version of Hamsterdam does not seem to have had the fictional city’s large positive effect on crime and also may well have increased drug use. We cannot be confident in those negative assessments: As discussed above, the data is far from conclusive. Nevertheless, at a minimum there is no evidence that the Platzspitz reduced crime, and there is strong evidence that it increased crime nearby. It was widely viewed as a failure, and even if that conclusion was wrong, it still does not seem that it deserves to be viewed as having achieved anything like the success that Hamsterdam is depicted as achieving. As a result, our best guess should be that *The Wire* may well be wrong to suggest that Hamsterdam would have achieved such good results. When it was tried in real life, it did not have them.

So if Hamsterdam is not the best solution to the problem of drug policy, what is? To truly reduce the drug-related violence that is realistically depicted on *The Wire*, legalization almost certainly has to be the best answer. Turf wars are eliminated (or at least greatly reduced) when a product can be bought cheaply in stores, like alcohol and tobacco in the U.S. and marijuana in Amsterdam. And perhaps legalization would be the best solution. But the experience in Amsterdam with marijuana legalization has involved a large spike in the number of marijuana users. To legalize all drugs, and risk such a spike in the number of cocaine and heroin users, would be politically toxic and, even as a policy matter, worthy of caution and concern.

The question is whether a nation can achieve at least some of the benefits of legalization without the cost of increased drug use. And it seems that the answer is yes, as judged by Portugal’s success with decriminalization. Before explaining why, though, let me acknowledge several crucial caveats: (i) decriminalization is no panacea; (ii) Portugal’s success, which itself is somewhat limited, is principally owed to measures other than mere statutory decriminalization; and (iii) more
extreme measures such as legalization could possibly be better for reducing harm on the whole even if they have the negative effect of increasing the number of drug users.

Decriminalization is no panacea because, unlike legalization, it continues to criminalize the sale of drugs and also asks the police to stop and cite people for the non-criminal (but still administratively illegal) possession of drugs. As a result, there is still the same incentive for black markets to exist, and those black markets may involve violence. So Portuguese-style decriminalization would not be expected to solve the main problems depicted on The Wire. Moreover, even the success Portugal has achieved is mostly due not to the decriminalization itself but to the nation’s commitment to drug treatment and other public health programs as part of its comprehensive plan in 2001. To be sure, decriminalization was an essential element of that plan; but it alone would not have done much. Finally, given the limited ambitions of decriminalization, we certainly cannot rule out the possibility that a more ambitious legalization approach would be better on the whole, even if it had negatives (such as increased drug use) that would have to be weighed against its positives (such as decreased drug-related violence).

Having said all that, Portugal remains a success story. In a world where tough drug policies do not seem to have been successful at reducing drug use or addressing the problems that spring from black markets—and in a world where lenient drug policies are often harshly condemned in ideological terms—Portugal has managed to maintain a relatively lenient policy and has reaped its intended benefits without many apparent harms.

Portugal’s drug policy may seem to be much grander than that of Hamsterdam. It involved a national statute and a vast national action plan, whereas Hamsterdam was implemented by one police officer in one neighborhood of one city. Portugal made drug use a non-crime, whereas Hamsterdam just involved some police officers looking the other way while that crime was committed. And it is true that Portugal’s large-scale approach, originating from and being thoroughly supported by elected officials at the highest level, accounts in part for the fact that the program has lasted.

Still, Portugal’s approach is also, in crucial ways, much less ambitious than Hamsterdam’s. Unlike Hamsterdam, Portugal aggressively enforces its criminal prohibition against drug sales. And unlike in Hamsterdam, Portuguese police cite people for (the administrative offense of) drug possession. For these reasons, Portugal was never even trying to achieve the sweeping successes that Bunny Colvin briefly achieved. Portugal has not solved the problem of drugs, or even come remotely close to doing so. It has merely improved upon the status quo, but given
how difficult drug policy has proven to be throughout the world, even such an improvement is a model of success.

CONCLUSION

*The Wire* is rightly famous for its realism. Not only is it based on real knowledge of the streets of Baltimore, but also it is willing (even eager) to depict shades of gray and the nuances of human life. But even *The Wire* is not perfect, and it is possible that its answer to the question of “what should be done?” is insufficiently subtle.

As presented by that TV show, the status quo is broken and irredeemable. What would be better, *The Wire* says, is a scheme of depenalization in the mold of Hamsterdam. Such a scheme would have great success, we are asked to believe, were it not impossible due solely to tragic political impediments.

In reality, the truth may be neither as hopeful as *The Wire*’s view of Hamsterdam nor as bleak as its view of the political realities that destroyed Hamsterdam. On the downside, we may not be able to achieve the benefits of legalization—decreased violence, to start with—without incurring increased drug use, as Amsterdam shows. Hamsterdam’s version of depenalization might even produce that harm without legalization’s benefits. But more hopefully, Portuguese-style decriminalization could achieve some meaningful benefits without increases in problematic drug use. That would be a major improvement upon the status quo. Still, it would require not only a great deal of political will (which might not be possible in the United States), but also the willingness to set our sights somewhat lower than Bunny Colvin did with Hamsterdam. Decriminalization (plus a major commitment to treatment and other public health measures, as in Portugal) would not solve all the problems with the drug trade, or perhaps even the biggest ones, but it might be the best we can do.