

STATISTICAL TRENDS CAN DISTRACT AND MISLEAD: A REPLY TO PROFESSOR LOKEN

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In his response to *Drug Prohibition: An Unnatural Disaster*,¹ Professor Loken avoids systematic confrontation with the wide range of our drug war costs and confines his disputation to my proposal to legalize and regulate hard drugs.² There is thus less disagreement between us than might casually appear, for I acknowledge that the wisdom of legalization, as opposed to drastic de-escalation, is debatable with respect to drugs other than marijuana.

Since the ultimate issues that separate us are not large ones, I would regard a reply to his commentary as a quibble were it not for his surprising challenge to my claim that drug prohibition causes crime. Critics of drug prohibition have gone largely unchallenged in our contentions that drug prohibition is criminogenic. Most prohibitionists simply ignore the claims. Others assert, without support in history, foreign experience, theories of human behavior, or any other source, that drug legalization would increase crime. The reason usually given, if any, is that tens of millions of productive citizens who are now drug-free would become addicted to newly-legalized drugs and become derelicts and steal or rob in order to eat.³ I dealt with those assertions in my article and gave them more deference than they deserve. Loken's claims about the nexus between prohibition and crime are of a different order: citing broad statistical trends, he says there is no "proof" that drug prohibition is criminogenic. He opines that the movements of crime rates over the past century seem largely unrelated to our alcohol or drug prohibition regimes. He also thinks that my argument about

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1. Steven B. Duke, *Drug Prohibition: An Unnatural Disaster*, 27 CONN. L. REV. 571 (1995).

2. Gregory A. Loken, *The Importance of Being More Than Earnest: Why the Case for Drug Legalization Remains Unproven*, 27 CONN. L. REV. 659 (1995).

3. See, e.g., Herbert D. Kleber, *Our Current Approach to Drug Abuse—Progress, Problems, Proposals*, 330 NEW ENG. J. MED. 361, 361-62 (1994).

criminogenics rests heavily on unreliable crime data.

Loken misreads my article when he finds in it a claim that a correlation between crime rate increases and drug war escalation establishes that the escalation caused the crime. I did mention that violent crime rates “nearly doubled” since Nixon declared war on drugs and said that the correlation between rising crime rates and drug war escalation was “not coincidental.” But I then attempted to establish the causal connections not by statistical correlations but by observations about economic forces, dilution of resources, effects of illegality, and other variables affecting law enforcement and criminal behavior. Understandably but erroneously assuming that I based much of my argument on statistical correlations, Loken has produced a blizzard of statistics which he suggests not only refute my arguments but “whisper” in the opposite direction: that the drug war may actually *reduce* crime.

Since I never made the claims attributed to me—or never meant to in any event—I see no point in debating the strength or validity of the contrary “whispers” emanating from Loken’s data. One of his observations, however, merits a serious response. He says that trends based upon the Federal Bureau of Investigation’s Uniform Crime Reports—which I cited—are unreliable and that a much better measure of crime rates appears in the Criminal Victimization Survey, which has been taken annually since 1972. Under that survey, Loken says, crime rates have fallen. Accordingly, he suggests, while my arguments about alcohol prohibition and crime were merely unpersuasive, they are “wholly insupportable” when applied to our own era and the drug war.

If I were making the argument that Loken attributes to me—that increases in crime rates prove the criminogenics of the drug war—he would have a strong point. Moreover, even though I didn’t make that claim, the arguments I made did draw some apparent support from the sharp uptrends in violent crime that I cited, based upon Federal Bureau of Investigation (FBI) data. A claim that anything is criminogenic appears more plausible when its growth is accompanied by increases in crime rates. Loken’s introduction of the victimization survey data does at least threaten to erase what little support such correlation provides, for the victimization survey suggests that both violent and property crime rates have not only failed to rise since 1973, they have actually gone *down*. For reasons which Loken seems to concede, the victimization survey is less clearly superior to the FBI reports on violent crime than it is with respect to property crime. I think, therefore, that the most reliable estimates lie somewhere between the two studies and that violent crime rates have gone up, but not by much, while property

crime rates have indeed gone down. The fact that my arguments received largely undeserved support from the FBI data, however, does not seriously undermine the arguments. It merely invites some elaboration.

Assuming, as Loken asserts, that crime rates have either risen little or have fallen since 1973, how can I cling to the notion that the drug war, which began in the early 1970s, causes "half of our serious crime"? How can a drug war that causes such property and violent crime have failed to produce a sharp increase in violent crime rates and a substantial jump in property crime rates? The answer: just as crime rate increases do not prove that the drug war produced the increases, the failure of crime rates to rise in tandem with drug war intensification does not disprove the criminogenics of the drug war. To restore my contention's plausibility and return us to the arguments I did make, all I need to show is that, during this period of stable crime rates, forces were pushing in the opposite direction, toward *reducing* crime, that, separately or in combination, were as powerful as the drug war. There were such forces.

One datum that all criminologists agree has explanatory power regarding crime rates is a change in the proportion of the population comprised of adolescents. Youngsters commit a vastly disproportionate share of crimes both of violence and against property rights. The proportion of the population between the ages of 15 and 19 decreased almost 30% from 1980 until 1992.⁴ Shrinkage in population shares in the age groups just above and below 15-19 were also substantial.⁵ That goes a long way toward explaining the stability in crime rates during that period. It also suggests that crime rates might have exploded had the age distributions remained constant.⁶

A strong anti-crime force, everyone concedes, is the official law enforcement apparatus (other than drug law enforcement and a few other counter-productive enforcement strategies). We nearly doubled our expenditures on such law enforcement (in constant dollars) since 1973,⁷ yet crime has not been reduced. Why? There may be other explanations

4. BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES—1994 14 (1994).

5. *Id.*

6. An eruption is due in another decade, when the 15 to 19 age group will bulge substantially from its present size. See Clifford Krauss, *No Crystal Ball Needed on Crime*, N.Y. TIMES, Nov. 13, 1994, § 4, at 4.

7. BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES—1975 160 (1975); BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, STATISTICAL ABSTRACTS OF THE UNITED STATES—1994 209 (1994).

than the drug war but Loken has not tendered any.

We have more than quadrupled our prison population since 1973 and nearly tripled it since 1980.⁸ We now have more than 1.3 million people in jail or in prison, the second highest incarceration rate in the world.⁹ Our incarceration rates for federal drug offenses have increased *tenfold* since 1980.¹⁰ Still, our violent crime rates edge upward and property crime rates are merely stabilized. Why? Loken suggests no answer.

Another force that is larger, much better distributed, and rivals law enforcement in effectiveness, is private defensive measures. In the past two decades, anti-theft devices, burglar alarms, security fences, and lighting systems have been a spectacular growth industry.¹¹ Tens of millions of Americans have armed themselves, their cars, and their homes with guns, mace, and other weaponry.¹² We have drastically changed our daily lives to reduce the risks of victimization. Children in our cities grow up in a garrison state, unfree to go anywhere, even in their own yards, unescorted. Women and the aged are fearful of traveling alone and eschew some shopping or residential areas to avoid becoming victims. Our parks and playgrounds are shunned by those who fear crime. Millions of city residents have sought sanctuary in the suburbs and others shelter their children in costly private schools. Hikers and joggers have formed clubs or groups to travel together, fearful of walking or running alone. Such massive, pervasive private efforts to prevent crime victimization put strong downward pressure on crime rates.¹³ Yet such pressure, combined with the other anti-crime forces

8. BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, SOURCEBOOK OF CRIMINAL STATISTICS—1993 600 (Kathleen Maguire & Ann L. Pastore eds., 1994).

9. MARK MAUER, AMERICANS BEHIND BARS: THE INTERNATIONAL USE OF INCARCERATION 1992 31 (1994).

10. Peter Reuter, *Hawks Ascendant: The Punitive Trend of American Drug Policy*, 121 DAEDALUS 15, 25 (1992).

11. A recent study estimates that expenditures for private security exceed \$50 billion annually, 73% more than is spent on police law enforcement. See NILS CHRISTIE, CRIME CONTROL AS INDUSTRY 104 (1993) (citing a 1991 National Institute of Justice Report).

12. Although I think it likely that the greater the supply of guns in the general population, the more people who get killed, it is also likely that such a supply of guns decreases, perhaps drastically, the numbers of thefts, robberies, and burglaries that would otherwise occur. See GARY KLECK, POINT BLANK: GUNS AND VIOLENCE IN AMERICA 101-52 (1991); Don B. Kates, Jr., *Shot Down*, NAT'L REV., Mar. 6, 1995, at 49.

13. Many self-protection measures are inefficient in reducing overall crime rates since predators can often bypass victims who have erected barriers or imposed burdens on criminals and can find potential victims who have not done so. Thus, self-protection has a "displacement effect" that is far more palpable than its general deterrent effect. Still, such measures impose

already mentioned, failed to bring crime rates down.

What the drug war has done is to create new motivations for crime and thus to swell the proportions of predators in the population, enlarging the propensity of Americans to prey on each other. At the same time, our preoccupation with drug prohibition has greatly diluted law enforcement resources available to curb predatory crime. Americans have thus not only been required to shoulder enormous increases in law enforcement and self-protection costs, the quality of their lives has been severely damaged. The ubiquitous threat of crime has wrecked our cities, fomented racism, destroyed our liberties, and shriveled our souls with fear of strangers. The corrosive impact of crime can grow like a metastasized cancer even if the numbers of actual perpetrations do not increase significantly. That is clearly the condition we are in today. Despite Loken's impressive arguments, I am convinced that the condition is in large measure attributable to our insane drug war.

search costs and risks on predators that do reduce crime to some extent.

