

The Problems With Pardons for Possession



A crate of marijuana buds from an illegal grow operation in a residential suburb in Denver, Colo., on Oct. 1, 2020. (Charlotte Cuthbertson/The Epoch Times)

by Theodore Dalrymple

President Joe Biden had pardoned thousands of people convicted of the possession of cannabis. He says that this will remove from them the burden of a criminal record and thereby improve their lives and prospects of employment.

Having spent much of my professional life among convicts, I'm all in favor of attempts to reintegrate them into society once they leave prison. The slate cannot be wiped clean—no wiping of a slate can undo a crime once committed—but the writing on the slate shouldn't act on the rest of a person's life as a kind of severe chronic disabling disease.

As is so often the case in human affairs, there's another side to the question. If I were an employer seeking someone in a position of trust (and practically all positions are those of trust), I should quite like to know if an applicant had been guilty of dishonesty. Other things being equal among applicants, I would probably prefer someone who had not been found guilty of a crime, though in some moods I might feel inclined from a sense of social duty or humanity to offer an ex-criminal a job. However, I would like the choice to be mine.

I speak from my experience in Britain, which might not be directly transferable to the United States, but it was obvious from that experience that crime (apart from the sexual variety) was a young man's game. Very few of the prisoners for crimes such as assault, burglary, robbery, and theft were above the age of 35, and practically all of them were recidivists, indeed multi-recidivists. This suggested one of two things: Either most criminals ceased to commit crimes after that age, or they became so adept at crime that they were never caught. I think the former is the more likely. They rehabilitated themselves, at least to a degree.

Another interesting fact was that those who were convicted of possession of cannabis were always caught in the context of committing another crime. In Britain, at least, very few were those prisoners who were imprisoned *solely* for possession of cannabis.

This brings me to the American situation. It seems to me from the outside that the criminal justice system has been deeply corrupted by the universal process of plea bargaining. I can see the argument in favor of this process: that it speeds up the administration of justice, speed being an important element of justice. (In Britain, it now takes 18 months to try an alleged murderer, while in Victorian times it took two weeks. I'm far from convinced that there are fewer miscarriages of justice now because of this increased

scrupulosity, or sclerosis.)

However, on the other side of the question is the fact that plea bargaining turns the administration of justice into a game of poker, a question of who blinks first. But what a man has or hasn't done is a matter of what a man has or hasn't done, not a matter to be haggled over like a purchase in an Arabian souk. Plea bargaining may be unfair both to the accused and to society. A man may plead guilty to a lesser charge when he has done nothing rather than face the chance of being found guilty of a more serious charge with which he's charged to extort an admission of some sort; and a man who has committed a very serious offense may seize the chance to plead guilty to a much lesser offense than the one he has actually committed, to the detriment of society.

The problem is compounded by managerialism in the administration of justice, when those working in the system are judged by how many convictions they secure and how quickly they secure them. Ideally, cutting of corners in this fashion should have no place in a criminal justice system, though perhaps it's inevitable in societies in which there are high levels of crime by comparison with the resources available to the criminal justice system. A vicious circle is set up: A high level of crime leads to cutting corners, and cutting corners leads to a high level of crime.

Plea bargaining, moreover, is inherently against the rule of law, as is (in my view) parole, at least where there's an element of administrative discretion as to whether it's granted or not.

Drastic prison sentencing for people who are found to possess small quantities of [marijuana](#) and have never done anything else is, however, clearly both absurd and unjust—and very expensive into the bargain.

There's a problem, however, in part caused by the corruption

of the criminal justice system by the process of plea bargaining. The prosecution wants a quick conviction; the defense (where the accused is guilty) wants a charge as low down the scale of offenses as possible. It's easy to prove possession; much harder and more time-consuming to prove most other offenses. In such a situation, possession will be used as a proxy for other, more serious crimes.

Indeed, The [Guardian newspaper](#), no advocate of imprisonment, stated:

"Marijuana Justice and the Last Prisoner Project [two pressure groups in favor of legalization] analyzed data last year that showed that the vast majority of people in state prison for marijuana charges had drug sale and other convictions on their records."

This makes it at least plausible that possession of cannabis is being used (wrongly from the point of view of justice) as a proxy for other criminal behavior.

Moreover, while it's true that many recidivist lawbreakers confine themselves to petty offenses, serious criminals who are recidivist do not disdain to commit petty offenses. In other words, where a person has committed a petty offense but has a serious criminal record, his petty offense is a sign of his continuing criminality.

The situation is complex, therefore. Biden is calling on state governors to [pardon](#) all those convicted of possession only, most of whom will have other convictions. A pardon for possession will not, therefore, assist *them* as far as their criminal record is concerned and may even give them the impression that they have been grievously wronged. A sense of grievance is not a discouragement to criminality.

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