

Introduction

FIFTEEN YEARS AGO, while riding the NYC subway, I picked up *The New York Times* sitting on the seat next to me and was immediately struck by the article “A Drug Court Takes a Risk to Aid Addicts.”¹ It spoke about the emergence of drug courts as a strategy for dealing with nonviolent drug offenders, and referred to the “human resilience” these courts tapped into and their “redemptive possibilities.” Brooklyn’s district attorney described them as a “symbol of an enlightened answer to the drug plague.” Addicts were given the choice of prison or drug treatment; if they chose the latter, they would attend treatment and regularly meet with a judge who had the power to send them to prison if they failed, but this program also gave them the chance to be “clean,” productive members of society. This made good sense to me. Addicts needed help, treatment was the best option, and coerced treatment showed that the courts cared about them. And I teared up at the story of Eddie Santiago, with the help of a judge, picking up the pieces of a life destroyed by addiction. As New York State Chief Justice Judith Kaye has explained, these courts fix “ruined lives, broken families, neglected children, ravaged communities.”² Who could disagree with this?

Drug courts offer a policy approach to drug use that has broad political appeal. Bill Clinton’s “drug czar,” General Barry McCaffrey, was a vocal supporter of drug courts and oversaw their expansion. George W. Bush praised them as “effective and cost-efficient.” And Barack Obama’s drug czar, Gil Kerlikowske, is making them a central feature in the Office of National Drug Control Policy’s platform. Drug courts have been implemented in every state and have been incorporated into mainstream criminal justice practice. Moving from a small experiment in a few urban areas, drug courts are becoming a central part of the criminal justice system. They are the subject of frequent opinion pieces, praised for their acknowledgment that addiction is a disease best addressed with a combination of treatment and sanctions.³ A “firm hand” and “swift response to infractions” can be the “best medicine for people with addictions.”⁴ Rock stars such as Trey Anastasio, the lead singer of Phish, and Slash, the former guitarist of Guns N’ Roses, as well as conservative politicians and retired military generals, sing their praises. *Newsweek* recently heralded them a “vanishingly rare thing in Washington: an issue with near consensus.”⁵ Few people openly

critique drug courts, and when they do, they quickly offer suggestions for improving them.⁶ The *paradigm* of coerced treatment is rarely questioned; the ideology of drug courts, with its premise that habitual substance use is caused by the disease of addiction, the cure for which is abstinence from drugs best achieved through heavily monitored drug treatment, is now widespread.

The popularity of drug courts rests on hegemonic beliefs about the improvable of the human condition; behavioral flaws stem from diseases that can be diagnosed and fixed. They also draw on our belief that transgressors must be punished even if an underlying disorder is compelling one's deviance. They constitute a seemingly inconsistent marriage of our faith in punishment and treatment, and yet they make perfect sense when we view the development of our ideas about deviance and deviants from a historical perspective. *Judging Addicts* is the story of this development. It focuses on the *ideas* that motivate the practice of coerced drug treatment in the criminal justice system, fully articulated during the Progressive Era in the United States when they were codified in court practice, but predating this institutionalization. I frame these ideas as historical triumphs, rather than scientific ones, and detail their origins. Unlike studies that have ably depicted the inner working of drug courts, their punitive and therapeutic balancing act in the "theater" of the courtroom,⁷ I explore how the ideas motivating their practice, as articulated by the words and writings of proponents for coerced treatment, are informed by competing theories of deviance (one viewing it as a crime, the other as an illness), different ideas about how to fix these problems (punishment or treatment), and the overlap between the punitive and medical paradigms. Framed within the sociology of knowledge and a constructionist perspective on social problems, I focus on how the people designing criminal justice policy talk about the problems of drugs and crime, and I attend to the ideas that motivate policy and practice.

Putting Ideas into Practice

My interest in the ideas motivating drug and criminal justice policy developed out of my public health work, where I was actively involved in articulating the disease model of addiction. For several years, I worked as a public health researcher and policy analyst for both city government

and nonprofit research organizations in New York City and New Orleans. Much of my work centered around drug policy in the United States, focusing specifically on advancing public health and medicalized perspectives of persistent substance use. Many of the program directors and policymakers I worked with shared a similar perspective—namely, that the correct way to understand persistent substance use, called addiction, was to view it as a disease. Steeped in this framework, I wrote reports and book chapters about substance users and drug policy. In one such chapter, “The Public Policy Context of Drug Use in New York City,” my coauthor and I wrote, “Substance abuse is a manageable, chronic disease, not unlike asthma or diabetes. This perspective is informed by a vast body of research on the biomedical bases of addiction.”⁸ We did not provide any citations to justify this perspective precisely because public health researchers and advocates so widely shared and repeated it as truth.

How did I know persistent substance use was a disease called addiction? Well, in fact, I didn’t. However, what I did know, from working with doctors and drug treatment providers, was that the disease model of addiction was considered an enlightened and progressive approach to understanding habitual substance use. Enlightened, because it reflected biomedical and scientific interpretations of deviant behavior. Progressive, because the medical model held the promise of removing the stigma associated with substance use. If addicts were sick, we couldn’t blame them for their addiction. And if they were sick, we couldn’t punish them for it either. As a participant observer in the world of public health and drug policy, I thought I understood the liberatory implications of this medical framework. I assumed that the adoption of the medical paradigm by the criminal justice system was progress and an important acknowledgment that addicts needed treatment not punishment, that habitual substance use was a medical not criminal justice issue.

Creeping Doubts

But as I started to do more research on drug policy across the country, talking with physicians who treated drug users and ran drug treatment programs and with the people in these programs, many of them poor and black or Latino, the implications of coerced drug treatment started to take on new meaning for me. I discovered that many, and oftentimes most, of

the people in drug treatment were mandated there through the criminal justice system regardless of whether they viewed themselves as addicts, and that they were monitored by medical doctors and the court system, by probation or parole officers, and by treatment staff. The data on admissions to drug treatment programs in the United States bear these observations out: the criminal justice system is the largest single source of referrals to publicly funded drug treatment for adults, young adults, and youth.⁹ I began to see firsthand how this merger of the punitive and medical produced programmatic and therapeutic contradictions and increased oversight for people trying to please the myriad treatment and criminal justice staff overseeing them. Treatment staff had their decisions second-guessed by judges, many of whom were setting the terms for what “success” in treatment meant. Drug users learned to play the part of contrite addict, deferring to the therapeutic discourse of treatment and the punitive overtones of the court. Treatment providers told drug users that they were sick with the disease of addiction. And yet they were also regularly reminded they were bad. Routine drug testing often led to termination from the program if these tests detected the ingestion of illegal drugs. Security guards stationed by the front door of the treatment program eyed them suspiciously. Reports back to judges and probation officers reminded drug users that people with the power to punish were watching them. Through subtle and overt signs, drug users were reminded that they might be sick with a disease but they were also bad and this badness manifested itself in their drug use.

As someone who believed in and advocated the disease model of addiction, I wondered: If these people were sick, why did the courts have any sustained interest in them? How could they justify this, in the face of the proliferating medical theories of addiction? What happened to the promise of reducing the stigma of substance use by calling it a disease? And did calling something a disease actually reduce stigma?

Working through the Doubts

Judging Addicts stems from these core concerns about the origins and implications of theories of deviance. I examine how drug users are constructed as bad and sick, as bad because they’re sick, as always sick and therefore always bad, always within the purview of the criminal justice

system. I consider medicine and punishment as important ideological vehicles for advancing the social control of drug users. I frame the medical and punitive perspectives as complementary rather than contradictory approaches to drug use.

My central interests are the forces outside the criminal justice system that provide the basis for the theories about drug use, addiction, and recovery that drug court advocates draw on to construct and justify a role for the courts in solving the complex phenomenon of habitual substance use. I look at how the problem of drug use and its connection to crime is constructed in the first place. Drug courts emerged at a historical moment where institutional crises, such as prison overcrowding, necessitated conceptual transformations in the classification of a group of offenders whose transgressions were drug-related. While still called defendants, these offenders are simultaneously labeled as addicts as well as clients, consumers, and participants. They are both bad and sick, and they are sick with a disease that is both biological and behavioral. Because addicts are sick with a disease that is known through behavioral abnormalities, in this instance criminal conduct, the court is focused on ameliorating these abnormalities. But the goals of drug courts extend far beyond the behavior that led to someone's initial arrest.

Drug courts are predicated on the notion that every aspect of a person's life is affected by their addiction, and thus broad swaths of their lives need to be addressed by the court to intervene in this addiction. Drug court proponents did not construct these theories of addiction; they have been developed and refined for more than two hundred years as a medical model of persistent substance use that viewed addiction as an incurable disease developed. These models hold that addicts have a chronic illness, one that can be managed but never eradicated. It can never be "cured" because addiction is a relapsing condition. Relapse is "inevitable," as so many drug court advocates told me, echoing the now commonplace notion that it is extremely difficult to stop using drugs and that several attempts are necessary for drug users to achieve sobriety—a tenuous sobriety, however, precisely because of the nature of their disease. If relapse is always a possibility, then addicts can never be cured.

Because sobriety is tenuous and abstinence hard to maintain, addicts need help to "stay the course." Drug treatment works but it can't keep addicts there if they don't want treatment or if they seek to stop using drugs through other means. The dominant perspective in the field of addiction

treatment and medicine is that, because addiction is a disease, it requires a therapeutic intervention. And because addicts relapse, this intervention needs to be sustained.

Drug courts enter into this discussion, drawing on prevailing medicalized theories to justify the practice of coercing people into drug treatment. But they also add to these medicalized theories of persistent substance use through their consistent advocacy for coercion as the key to effective treatment. They argue that coercion compels addicts to stay in treatment longer than they might if they can enter and leave voluntarily. Drug court advocates actively construct a solution to the problem of addiction that clearly articulates coercion as the centerpiece. The way to achieve this coercion is through the courts, where judges are given the power to both heal and punish. They heal by coercing addicts into drug treatment, with incentives such as reduced prison sentences, and they punish by imposing sanctions, such as periodic incarceration. But this punishment is viewed as part of the healing process, rather than counter to it. Periodic incarceration or other less severe sanctions become the way the court supports the defendant's recovery process.

A second way courts support recovery is by recognizing that the defendant coming through the courts, labeled an addict, is more than just someone who needs to stop using drugs. They are someone whose life is "out of control," as evidenced by repeated arrests, and someone, therefore, who needs help in areas of their life not considered, through strict legal reckoning, within the court's purview. In the name of helping people and facilitating recovery, drug courts expand the scope of activities the court monitors. Rather than punishing a specific act that has happened in the past, drug courts use this specific act—the reason for the person's arrest—as the "opportunity" to affect the defendant's future actions. The court concerns itself with a host of factors in the defendant's life. They justify this expansion through theories of addiction that view habitual substance use as affected by and affecting every aspect of the person's life. Because the addict's behavior also affects other people, conceptualized as "the community," this expansion into increasing aspects of the defendant's life is enacted in the name of public safety.

Drug court advocates explain this increased oversight of defendants with a logic of caring and concern for the lives of defendants. Traditional criminal processing of drug offenders has filled prisons but done nothing to stop drug use or drug-related crimes. Often called "alternatives to

incarceration,” drug courts are viewed by their advocates as a “revolutionary” approach, one that injects a “healing” function in the criminal justice system—and one that demands accountability of defendants while offering them the way to transform their lives according to prevailing medicalized and behavioral theories of addiction and recovery. As C. West Hudleston, the CEO of the National Association of Drug Court Professionals, recently wrote, “Drug court clients and professionals alike embody and are shining examples of the courage to make progress every day.”¹⁰ Proponents of these courts actively produce a narrative of their noble approach, one that is echoed in the glowing news coverage they receive.

When I originally started this research, I understood drug courts as their proponents presented them, as a “radical reorientation” away from the exclusively punitive approach that had come to dominate contemporary punishment. Unlike drug court proponents, and counter to my initially positive response to them, I was concerned by the increasing, and seemingly unprecedented, levels of interaction between the criminal justice and treatment systems I witnessed in my public health work. Drug court advocates genuinely believe that what they are doing is a radical departure and that their efforts at rehabilitation differ from previous generations’ with the explicit “responsibility” that is foisted on the defendants to be active participants in their own cure. They also believe that their efforts to show that the courts “care” is a departure from the punitive approach of the criminal justice system, where defendants are processed with little concern for their interior lives or the underlying motivation for their criminal behavior.

History Repeats Itself

While drug courts contribute to contemporary theories about and discussions of addiction, they are part of a larger historical conversation about how to define, contain, and control deviance. Much that has been written about contemporary punishment traces the origins of these increasingly punitive strategies to the early 1970s, when a shift from a “welfarist” approach to punishment to a “managerial” one occurred.¹¹ Punishment, according to these scholars, is no longer about transforming the individual but about managing dangerous populations. In much of the literature, two opposing perspectives are mapped out: repressive versus rehabilitative,

punitive versus transformative. And yet these typologies can't fully account for any single punishment strategy, no matter how benign or nefarious it seems at first glance. I have come to understand the interplay between the rehabilitative and repressive: they need each other, at any one historical moment, to serve as an important point of contrast. But rehabilitative or punitive in comparison to what?

As I delved into the extensive history of punishment, I realized that the issues plaguing contemporary punishment have deep historical origins. Punishment and discipline have been integral to the formation of the state; nascent communities used rulemaking and their responses to rule-breaking as a way to establish order.¹² The sociologist Kai Erikson, in his groundbreaking work *Wayward Puritans*, showed how the Puritans used punishment as a way of defining who they were as a community. They also developed knowledge about deviance: what produced it and how to classify it. The Puritans used static categories, not unlike the category of "addict" used by drug court advocates, to label deviants permanently as such. While rulebreakers could be reformed, and reform was an important goal of punishment, their status as deviant remained constant and served as a reminder to the larger community about the rules that were necessary to determine the community's survival. The contradiction in punishment, then, is that it is meant to fix the offender who, because of prevailing theories of deviance, can never fully be fixed.

This tension inherent in punishment reforms, and their inability to fix people, has led to what the historian David Rothman has defined as a cycle of "conscience and convenience" as each generation attempts to get punishment "right."¹³ Through his examination of Jacksonian and Progressive Era punishment transformations in the United States, Rothman identified a cycle whereby conscience propelled reformers to transform the status quo of punishment. Armed with new theories about what causes crime and how to fix the individual criminal, these reformers argued for a more humane way to punish transgressors. Prisons, considered by many today to exemplify one of the least humane approaches to punishment, were the result of reformers' efforts and were considered the most progressive and enlightened way to alter behavior. The ideals of the reformers, however noble, are often taken over by the imperatives of convenience, where misapplications of the underlying principles that guided the reform are put in place, partly for institutionally expedient reasons. The misapplication then leads to new reform

efforts meant to cure the ills that come out of the previous reformers' efforts.

Progressive Era reformers initiated a host of transformations in punishment that were largely attempts to undo the deleterious effects of the prison and to enact the kind of personal transformation progressives thought was the key to curing deviance and deviants. They emphasized a personalized approach to punishment and heavy judicial discretion, and were convinced this discretion was essential to address the environmental and psychological causes of crime. It was this same personalized approach that would come under attack fifty years later by reformers who argued that discretion led, among other things, to gross abuses of the system and to racial discrepancies in sentencing.

My Argument

Framing drug courts within these broader historical perspectives as well as within contemporary discussions of punishment, deviance, and addiction has led me to revise my original understanding of drug courts' historical uniqueness and to the five main conclusions about drug courts, summarized briefly here, that this book will address.

First, drug courts, rather than constituting a "radical reorientation" or a "triumph of the disease model," are neither radical nor a triumph.¹⁴ Instead, they greatly resemble the Progressive Era reforms that influenced punishment in the late nineteenth and early twentieth centuries. Then, as now, the medical model of deviant behavior was a key tool advocates used to justify court expansion and the individualized punishment/rehabilitation they enacted, rather than to cede control of social problems to the medical establishment. Like these earlier reforms, drug courts draw on outside disciplinary perspectives to articulate an enhanced role for the court as an institution that uses its punitive power to coerce rehabilitation in the name of "helping" people, rather than solely punishing them. In doing so, the advocates of drug courts reform how the criminal justice system understands and responds to drug-related offenses while firmly cementing the control of addiction in the hands of this same system. Drug courts aren't a particular triumph because, even in the most inflated estimate of their scope, they affect a mere fraction of the more than seven million people currently under criminal justice supervision in the United States.

Second, despite the deep historical precedents for coerced treatment, drug court advocates speak, almost uniformly, as if these courts represent a radically new approach to addressing criminal offenders. The advocates I interviewed believe that drug courts are the right way for the criminal justice system to deal with drug users. They see these courts as unprecedented and visionary. Because they speak with an almost monolithic voice about these courts, they do not, with a few exceptions, engage seriously with the critiques that were lodged against, and led in part to the demise of, their Progressive Era predecessor courts. Unquestioningly believing that drug courts are better than prison, and viewing prison as the only other way to deal with drug offenders, the advocates I interviewed dismissed any serious consideration that judges might use their greatly expanded powers in potentially dangerous ways.

Third, the disease designation, while an attempt to differentiate among the individuals under criminal justice supervision, actually obscures their racial homogeneity. By ascribing a disease state to defendants, drug courts erase racial bias from the equation: discussions of race were uniformly absent from my interviews with advocates about coerced treatment and criminal justice processing. The advocates I interviewed spoke about the “revolving door” of drug offenders, the explosion of drug-related arrests in the 1980s, and the jail and prison overcrowding that compelled them to seek alternative sanctions to prison for *addicts*. In a criminal justice system defined almost exclusively in terms of racial inequality, where African Americans and Latinos are vastly overrepresented and far more likely than their white drug-using counterparts to be arrested, the absence of a discussion of race is notable. According to this disease logic, the state of addiction renders individuals vulnerable to criminal justice involvement, not bias in policing, arrest, charging, conviction, and sentencing that leads some drug users directly into long-term oversight by the criminal justice system. Again, this medicalizing of defendants resembles the Progressive Era reforms where middle-class anxieties about immigrant behavior were translated into disease designations that permitted new forms of social control.

Fourth, by removing consideration of race and class, drug courts continue with rather than depart from the historically persistent efforts to define deviance in ways that are compatible with an implicit logic of inequality, and that complement rather than counter the concentrated institutional context of prison. Drug courts echo the specific concerns of the Progressive Era reformers, with the use of the courts as the site for

enacting medical and behavioral sanctions, as well as the broader concerns of control and deviance that predate the Progressive Era. Thus they are a part of the cycle of conscience and convenience as each generation of middle-class reformers attempts to model punishment on prevailing norms and enact social control over “unruly” classes in ways that are compatible with prevailing sensibilities about the causes of and cures for deviance.

Fifth, and overall, understanding punishment from this historical perspective, and the needs it serves in the community, it is difficult, and irrelevant, to declare any one punishment strategy “innovative,” “groundbreaking,” or any of the many other adjectives that have been used to describe the historically persistent efforts of reformers to craft punishment that “works.” The one constant is the need to figure out how to enact effective punishment. Effective *at what* is an issue this book will directly take on, focusing on the ways that drug court advocates stake a claim for the courts in treating such a complex concept as addiction.

While historical considerations are paramount to this book’s argument, it is also important to emphasize, as the historical sociologist Philip Gorski points out, that “similar is not identical.”¹⁵ Drug and problem-solving courts are emerging at a particular historical time. This historicity affects the theories of crime, addiction, and the court’s role in solving social problems that court reformers draw on and construct. It also affects the arguments reformers develop, how they frame these arguments, the way they justify their interventions, and the shape these interventions take. This book is focused on articulating these theories, providing their historical precedents, and considering drug courts as a distinct, yet interconnected, moment in the construction of the problems of deviance, crime, and punishment.

Overview

Chapter 1 provides the background about the history of drug courts and the specific theory and methods I used for this book. In it I discuss the theoretical background for my study’s empirical focus, detailing the sociology of knowledge literature. I argue for an approach to understanding punishment that views the construction of the “problems” of crime, punishment, and deviance as an important area of inquiry, an approach that considers the ideas behind drug courts as relevant for understanding their expansion.

Chapter 2 details the history of punishment in the United States. I describe the competing theories that have prevailed throughout the history of punishment about what exactly causes people to transgress norms and what compels them to commit crimes. I link these theories to generalized constructions of deviance as well as specific strategies that have been used to define, contain, and control criminal behavior.

In Chapter 3 I draw on the words and writings of drug court proponents to detail the multiple problems they were responding to when they developed this particular model of coerced treatment. As this chapter shows, drug court advocates were concerned by the increased and repeat incarceration of drug offenders. Their solution was to put rehabilitation back on the agenda of the criminal justice system in a way that rehabilitates the status of judges and the courts while “fixing” defendants. Rather than viewing the decriminalization of drugs as a means to reduce the prison population, they see drug courts as a solution that allows the criminal justice system to regain legitimacy and retain control of drug users. It is here and in chapter 5 that advocates’ uniform sentiments about drug courts become apparent.

Because prevailing approaches to punishment are affected by ideas with origins outside punishment, I pay attention in chapter 4 to the rise of medicalized theories of addiction that drug court advocates draw on to stake their claim over addicts. It is these now dominant ideas that are the basis for the broad support for drug courts.

In Chapter 5 I show how drug court advocates draw on the prevailing medical and social sciences to explain addiction and to argue for treatment over incarceration. In doing so, however, they create their own theoretical logic when they argue for the importance of coercion—and especially the role coercion can play in rehabilitating someone who is sick. Drug court advocates merge seemingly contradictory perspectives in making their “case for coercion,” and draw on theories of addiction that are heavily influenced by biomedical perspectives to argue for enhanced court and judicial oversight of defendants.

Chapter 6 discusses the future of drug courts, focusing on the recent preoccupation of advocates with these courts’ institutionalization. I show how they attempt to balance contradictions that are inherent in efforts to “institutionalize” interventions whose very success is ascribed, by these same advocates, to their highly personal nature. Judges gain personal knowledge about each defendant that can be used to enact consequences

that will impress on the defendant the importance of following the prescribed treatment protocol. One of the main features of drug courts—their individualized and personalized nature—is in direct tension with the imperatives of institutionalization. This tension is manifested in the advocates' lack of consensus about what drug court success means. I also discuss the expansion of the drug court model, as it moves horizontally to other forms of criminality, redefined as medicalized deviance, and vertically, to juveniles who are a renewed target for coercive therapeutic criminal justice measures.

In the book's conclusion, I consider alternatives to drug courts and the criminalization of drugs and drug users that entail neither punitive oversight nor coercion. Highlighting the contradictions in our drug policy, where some people are punished for using mind-altering substances while others are encouraged to use them via prescription pharmaceuticals, I reiterate the idea that our preoccupation is less with drug use than with the behavior of certain drug users. I conclude that unless we have an epistemological shift in how we understand drugs, drug users, the value of sobriety, and the role of the state in coercing health, we will continue in a failed cycle with long historical roots and precedents.

"Drug Court Works," claims a bumper sticker sold by the National Association of Drug Court Professionals. Four recent studies suggest the contrary and have leveled critiques against drug courts similar to those that hastened the demise of Progressive Era reforms.¹⁶ They fail to address the racial bias in the criminal justice system and therefore favor white defendants, screening out African Americans. They are "conviction mills," forcing people to plead guilty to get into the drug courts. They "widen the net" of the criminal justice system: more rather than fewer people are arrested for low-level drug offenses because drug courts are an alternative avenue through which to process these defendants. They diminish resources for people who want to enter treatment voluntarily, diverting increasingly scarce funds for drug treatment to people mandated there through the criminal justice system. People who fail at drug court and go to prison end up spending more time incarcerated than if they had bypassed drug court altogether.

Judging Addicts is both an intellectual and political enterprise. By attending to and contextualizing how advocates of coerced treatment craft their arguments, I am showing how they are making ideological arguments,

framed within the technical language of criminal justice processing, that have broad social resonance. They appeal to prevailing ideas about the connection between drugs and crime, the values of sobriety, and the importance of “doing good” while disciplining. They actively construct force as the best medicine. Can we imagine a world where drug users aren’t subjected to medical control and criminal justice coercion?