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Drug Markets, Fringe Markets, and the Lessons of Amsterdam

Lance McMillian

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Drug Markets, Fringe Markets, and the Lessons of Hamsterdam

Lance McMillian*

Abstract

The Wire is the greatest television series of all-time. Not only that, it is the most important. One of the most memorable story arcs from The Wire's five seasons is the rise and fall of Hamsterdam—a quasi-legalized drug zone in West Baltimore. Stories are powerful teaching tools because they marry information and context. By seeing how the application of law affects characters we know and care about, we become more attune to the potential effects of legal decisions in the real world. The story of Hamsterdam—which is essentially an attempt to transform a black market into a fringe market—presents just such an opportunity. When considering the various dimensions of the fringe economy, life in Hamsterdam imparts three critical insights:

(1) Markets arise wherever there exists market demand. Drug dealers exist because sufficient numbers of people desire to use drugs. When one drug dealer in *The Wire* is taken off the streets through incarceration or death, another drug dealer readily takes his place. Similarly, the fringe economy exists because enough people perceive a need for the services it offers. And where there is demand, there is supply. The lasting lesson is that the fringe economy is going to exist whether we like it or not.

(2) Legalization and regulation, not prohibition, represent the best method for controlling the negative externalities of fringe markets. A key aspect of the *Hamsterdam* covenant between the police and the drug dealers centers on its mutuality of promises. The police promise immunity for all dealing within Hamsterdam's confines; the dealers agree not to deal anywhere else. In essence,

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the dealers consent to submit to regulation in exchange for legalization. Prohibition, conversely, precludes this type of agreement because it drives drug dealers and others who trade in outlawed goods into the shadows away from law's light. Black markets inevitably fill the void created by these outright legal bans, transforming a regulatory problem into a law enforcement problem. A rise in violence necessarily follows, as the suppliers of black market goods become responsible for enforcing their own norms in law's absence. The lesson for policymakers is that regulating a fringe economy can often induce better behavior from questionable economic actors than the alternative of policing an underground economy.

(3) Mustering the political will to provide legal sanction to the fringe economy is a difficult, if not impossible, task. *Hamsterdam fails because Baltimore's politicians fear that embracing its success will lead to electoral defeat. Regulation is a tool of nuance; prohibition is a blunt instrument. Even though the former promotes the greater good, voters better understand the latter. The Wire teaches that this reality presents a structural impediment to genuine reform. In a political world where courage is in short supply, the possibility of real change is illusory. The lesson is that innovative thinking in handling the problems created by the fringe and underground economies will likely meet significant resistance at the point of implementation. Good ideas will remain untested, and long-term problems will continue unaddressed.*

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I. Introduction

The Wire is the greatest television series of all-time.¹ Not only that, it is the most important.² The transcendental quality of the show lies in what it teaches those of us living in the United States about ourselves. Even when we as a society know the right thing to do, our decaying institutions lack the capacity to act. The ineffectual status quo continues unabated. This feeling of impotence is so jarring to viewers because we immediately know it to be true: our institutions are broken.³ From this perspective, *The Wire* is not just a television show; it is an expose on the slow decline of America in the twenty-first century.

One of the most memorable story arcs from *The Wire*'s five seasons is the rise and fall of Hamsterdam, detailed more fully in

1. *The Wire* (HBO television broadcast June 2, 2002–Mar. 9, 2008). Tributes to the greatness of *The Wire* abound. See Dan Rowe & Marti Cecilia Collins, *Power Wire: Understanding the Depiction of Power in TV*, 2009 J. INST. JUST. INT'L STUD. 182, 185 (noting *The Wire*'s "rare combination of critical success and cult status"). Even President Barack Obama named *The Wire* as his favorite show. See Michael A. Fletcher, *Barack Obama: Wire Fan*, in THE WIRE: TRUTH BE TOLD 37–38 (2009) (noting President Obama's enthusiasm for the show and suggesting that it stems from an understanding of the show's depiction of urban America).

2. Renowned Harvard sociologist William Julius Wilson credits *The Wire* as the leading educational tool on the problems facing urban America: "[*The Wire*] has done more to enhance our understanding of the challenges of urban life and the problems of urban inequality than any other media event or scholarly publications, including studies by social scientists." Amanda Fairbanks, *Deconstructing 'The Wire,'* N.Y. TIMES, Jan. 3, 2010, at ED4 (quoting Wilson), available at <http://www.nytimes.com/2010/01/03/education/03wire-t.html>.

3. See J.M. Tyree, *Review of The Wire: The Complete Fourth Season [DVD]*, FILM Q. 61.3, 32, 38 (Spring 2008) ("*The Wire* is in the business of telling America truths about itself that would be unbearable even if it were interested in hearing them.").

Part II of this Article.⁴ Bunny Colvin, a high-ranking police officer on the verge of retirement, suffers an existential crisis prompted by the ongoing futility of Baltimore's drug war.⁵ His novel response is to create quasi-legalized drug zones, which are quickly dubbed "Hamsterdam" by the drug dealers who populate them.⁶ Colvin's calculus is straightforward: by concentrating the worst elements of his district in discrete locations, he improves the quality of life for the law-abiding majority everywhere else. The experiment proves a stunning success—until the politicians learn of it.⁷ Fearful of the political backlash when news of Hamsterdam's existence inevitably spreads, Baltimore's leaders quickly shut it down and force Colvin to resign in disgrace.⁸ With Hamsterdam destroyed, the drug dealers again terrorize the rest of Baltimore. The status quo reigns once more.⁹

Stories are powerful teaching tools because they marry information (knowledge) and context (application).¹⁰ By observing how the power of law affects characters whom they have come to

4. The Hamsterdam story arc takes place during Season Three of *The Wire*. See *The Wire: Season Three* (HBO television broadcast Sept. 19, 2004–Dec. 19, 2004) (including the episodes: *Time After Time*; *All Due Respect*; *Dead Soldiers*; *Hamsterdam*; *Straight and True*; *Homecoming*; *Backburners*; *Moral Midgetry*; *Slapstick*; *Reformation*; *Middle Ground*; and *Mission Accomplished*); see also RAFAEL ALVAREZ, *THE WIRE: TRUTH BE TOLD* 217–71 (2009) (summarizing each episode of Season Three and giving the contextual information necessary to understand the episode's part in the *The Wire*'s complete narrative).

5. See *The Wire: All Due Respect* (HBO television broadcast Sept. 26, 2004) (containing Colvin's reaction to the shooting of a fellow police officer during a drug sting); see also ALVAREZ, *supra* note 4, at 224 (noting Colvin's perception of the bleakness of his expectations when he considers it a "good night" only because a cop shot in the line of duty did not die).

6. See *The Wire: Dead Soldiers* (HBO television broadcast Oct. 3, 2004) (containing Colvin's initiation of the Hamsterdam project); see also ALVAREZ, *supra* note 4, at 227 (relating Colvin's revelation of his Hamsterdam plan to his fellow officers).

7. See *The Wire: Middle Ground* (HBO television broadcast Dec. 12, 2004) (containing Colvin's revelation of the Hamsterdam project to Carcetti).

8. See *The Wire: Mission Accomplished* (HBO television broadcast Dec. 19, 2004) (containing Carcetti's order to dismantle Hamsterdam and Colvin's demotion to Lieutenant).

9. *Id.*

10. See CHIP HEATH & DAN HEATH, *MADE TO STICK: WHY SOME IDEAS SURVIVE AND OTHERS DIE* 204–37 (2d ed. 2008) (describing the role of stories in the spread of new ideas).

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, painting “a picture of the law in action [and] marshaling the power of the visual to make law more real, less abstract.”¹¹

The story of Hamsterdam—which is essentially Colvin’s attempt to transform a black market into a quasi-legal, regulated market—presents an opportunity to utilize this promise of popular culture to analyze public policy questions related to underground and fringe economies.¹² Because of their disproportionate effect on disadvantaged communities, low-value markets—legal and illegal—generate significant attention from commentators and scholars.¹³ This Article adds to that body of work by assessing the lessons that Hamsterdam imparts about the various dimensions of the ongoing struggle against illegal

11. See Michael B. Kent, Jr. & Lance McMillian, *The World of Deadwood: Property Rights and the Search for Human Identity*, 20 S. CAL. INTERDISC. L.J. (forthcoming 2012) (discussing interdisciplinary potential of law and television for understanding legal problems); see also Rowe & Collins, *supra* note 1, at 183 (“Fiction’s advantage over news is that it permits us to see how the outcomes are achieved and how different characters use the power available to them in an attempt to reach their goals.”).

12. The “fringe economy” encompasses economic actors operating on the outer edge of legality such as “pawnshops, check cashing outlets, rent-to-own stores, tax-refund anticipation lenders, the makers of car title pawns, cash leasing operations and other second-tier credit providers as well.” Ronald H. Silverman, *Toward Curing Predatory Lending*, 122 BANKING L.J. 483, 486 (2005).

13. See generally WILLIAM F. BUCKLEY, JR., LET US TALK OF MANY THINGS 404 (2000) (presenting Buckley’s Oct. 11, 1995 speech “The Drug War Is Not Working”); HOWARD JACOB KARGER, SHORTCHANGED: LIFE AND DEBT IN THE FRINGE ECONOMY (2005); R.T. NAYLOR, WAGES OF CRIME: BLACK MARKETS, ILLEGAL FINANCE, AND THE UNDERWORLD ECONOMY (2005); ERIC SCHLOSSER, REEFER MADNESS: SEX, DRUGS, AND CHEAP LABOR IN THE AMERICAN BLACK MARKET (2004); Richard R.W. Brooks, *Credit Past Due*, 106 COLUM. L. REV. 994 (2006); Seth Harp, *Globalization of the U.S. Black Market: Prohibition, The War on Drugs, and the Case of Mexico*, 85 N.Y.U. L. REV. 1661 (2010); Jim Hawkins, *Regulating on the Fringe: Reexamining the Link Between Fringe Banking and Financial Distress*, 86 IND. L.J. 1361 (2011); Angela Littwin, *Beyond Usury: A Study of Credit Card Use and Preferences Among Low-Income Consumers*, 86 TEX. L. REV. 451 (2008); Ronald J. Mann & Jim Hawkins, *Just Until Payday*, 54 U.C.L.A. L. REV. 855 (2007).

drugs, in particular police efforts in urban environments to attack the problem from the supply side through criminal pursuit of local drug dealers. These lessons have wide relevance and applicability, including guidance for analysts of the fringe economy.

Three insights predominate. First, drug dealers exist because a sufficient number of people desire to use drugs. When one drug dealer in *The Wire* is taken off the streets through incarceration or death, another drug dealer readily takes his place. Demand creates supply.¹⁴ This never-ending pattern dooms law enforcement efforts to disrupt the distribution chain for illegal drugs and serves as the impetus behind the creation of Hamsterdam.¹⁵ Similarly, the fringe economy exists because enough people perceive a need for the services it offers. While law can complicate a person's decision to chase this demand through the imposition of criminal penalties on suppliers of disfavored products and services, it can do nothing to decrease the fact of consumer demand in the first place. The lasting lesson is that the fringe economy is going to exist whether we like it or not. Part II of the Article explores the inevitability of these market forces in greater detail.

Second, Hamsterdam teaches that regulation, not prohibition, may represent the most effective means of containing the negative externalities of low-value markets.¹⁶ A key aspect of

14. See ADAM SMITH, AN INQUIRY INTO THE NATURE AND CAUSES OF THE WEALTH OF NATIONS 63–65 (Edwin Cannan ed., 1994) (1776) (describing the causal effect of demand on the sale of goods offered in the market).

15. See *The Wire: Reformation* (HBO television broadcast Nov. 28, 2004) (transcribing Colvin's speech to his men, which compared Hamsterdam to beer in a paper bag); see also ALVAREZ, *supra* note 4, at 224 (referencing Colvin's rationale for setting up Hamsterdam when Colvin gives a speech explaining that "the corner" is the "poor man's lounge" and that policing "the corner" would be a Sisyphean task).

16. The black market for illegal drugs creates a whole host of negative externalities for American society:

When the sale of a popular recreational drug is banned, wealth and power flowing from productive capital are amplified and transferred from the arena of competition between legitimate firms to the monopoly control of entrepreneurs whose competitive advantage is a willingness to break the law. The government then invests in thwarting the criminals, who counterinvest in resistance and subterfuge. Meanwhile, large numbers of transactions take place without recourse to private property rights or the civil courts, leaving

the Hamsterdam covenant between the police and the drug dealers centers on its mutuality of promises. The police promise immunity for all drug dealing within Hamsterdam's confines; the dealers agree not to deal anywhere else.¹⁷ In essence, the dealers consent to submit to regulation in exchange for legalization. Prohibition, conversely, precludes this type of agreement because it drives drug dealers and others who trade in outlawed goods into the shadows away from law's light. Black markets inevitably fill the void created by these outright legal bans, transforming a regulatory problem into a law-enforcement problem.¹⁸ A rise in violence necessarily follows, as the suppliers of black-market goods become responsible for enforcing their own norms in law's absence.¹⁹ The lesson for policymakers—as described more fully in Part III—is that regulating the fringe economy can often induce better behavior from questionable economic actors than the alternative of policing an underground economy.

violence as the only mechanism for adjudicating contractual disputes and enforcing industry norms. Violence is used to take over and hold supply routes and distribution territory, with each gangster knowing that to succeed he must be more brutal than the gangster whom he has just supplanted. Over time, violence and expenditures ratchet upward, making it increasingly more expensive to bring the good to market, exacerbating the cycle. Meanwhile, consumers whose demand for drugs is inelastic (in some cases due to addiction) resort to theft to pay for artificially priced drugs they can no longer afford. The only constant in this uncontrollable spiral is a steady supply. The only change to consumers is increased price and reduced quality. Instead of champagne or powder cocaine, they get moonshine or crack, the latter substances being cheaper to produce clandestinely, more compact for transportation, and providing greater per-unit intoxication to consumers wishing to minimize their transactions with criminal suppliers.

Harp, *supra* note 13, at 1670–71. Other externalities of prohibition include “an overcrowded prison system filled disproportionately with people of color” and the worsening of the “AIDS crisis by ensuring the absence of clean needles for intravenous drug use.” Noah Mamber, *Coke and Smack at the Drugstore: Harm Reductive Drug Legalization: An Alternative to a Criminalization Society*, 15 CORNELL J.L. & PUB. POL'Y 619, 629 (2006).

17. See ALVAREZ, *supra* note 4, at 227 (detailing Colvin's explanation of the rules of Hamsterdam to his lieutenants).

18. See SMITH, *supra* note 14, at 63–65 (discussing how demand creates markets).

19. See RICHARD A. POSNER, *ECONOMIC ANALYSIS OF LAW* 245 (4th ed. 1992) (noting that “drug traffickers are constrained to use violence to enforce their contracts because they are denied the use of legal remedies”).

Third, there exists the political element. Hamsterdam fails because Baltimore's politicians fear that embracing its success will lead to electoral defeat.²⁰ Regulation is a tool of nuance; prohibition is a blunt instrument. Even though the former promotes the greater good, voters better understand the latter. Because those who operate at and beyond the edges of the economy are not sympathetic figures, politicians that advocate liberalized policies toward fringe economic players open themselves up to attack by opportunistic opponents.²¹ *The Wire* teaches—preaches even—that this reality presents a structural impediment to genuine reform. In a political world where courage is in short supply, the possibility of real change is illusory. The lesson is that innovative thinking in handling the problems created by the fringe and underground economies will likely meet significant resistance at the point of implementation. Good ideas will remain untested, and long-term problems will continue unaddressed. Part IV of this Article expands on these political realities.²²

20. See *The Wire: Mission Accomplished*, *supra* note 8 (depicting how Carcetti's fear of political backlash led to the destruction of Colvin's Hamsterdam project).

21. See, e.g., ALVAREZ, *supra* note 4, at 204–05 (noting the damage done to the political career of Kurt Schmoke, a former Mayor of Baltimore, after he suggested that Americans “rethink the [drug] problem as a decriminalized health issue”).

22. To be sure, *The Wire* reflects a distinct point of view, namely that of its creators David Simon and Ed Burns, who are quick to criticize America's “dysfunctional drug prohibition,” see ALVAREZ, *supra* note 4, at 205, and intentionally used *The Wire* as a vehicle to rally others to their cause:

[U]ltimately, the storytelling that speaks to our current condition, that grapples with the basic realities and contradictions of our immediate world—these are stories that, in the end, have some chance of presenting a social, and even political, argument. And to be honest, *The Wire* was not merely trying to tell a good story or two. We were very much trying to pick a fight.

David Simon, *Introduction* to RAFAEL ALVAREZ, *THE WIRE: TRUTH BE TOLD* 1, 3 (2009). Simon—a former journalist—and Burns—a former police officer and school teacher—have long held an interest in the effects of drugs on inner-city communities. See *id.* at 9–10 (describing the influence of their past careers on the thought processes of Simon and Burns). Simon and Burns's highly acclaimed book, *The Corner*, tells the true year-in-the-life story of those trying to survive the drug market in West Baltimore and concludes that “[t]he corner culture and addiction are powerful forces—equal to or greater than all the legal barriers and social programming arrayed against them.” DAVID SIMON & ED BURNS, *THE*

The Wire resonates for so many because it authentically exposes middle-class, white-collar observers to a world completely foreign to them.²³ The fringe economy suffers from the same mystery.²⁴ Like the Baltimore on display in *The Wire*, it exists on the outer reaches of respectable society, certainly distant from the lives of most of the scholars who devote attention to it. Studying Hamsterdam in its journey from black market to fringe market then back to black market—while not a perfect analogy to traditional fringe markets such as pawn shops, predatory lenders, and the like—is one way to bridge this cultural gap, perhaps helping to better understand both the economic problems that plague those struggling to stay afloat financially and the political problems that block effective reform.

II. Hamsterdam

In the very first episode of *The Wire*, Detective Ellis Carver surprises a colleague when he observes that it is a mistake to call the War on Drugs a “war.” Skeptical, his friend retorts, “Why not?” Carver’s concise response: “Wars end.”²⁵ These words help to establish a recurring motif—called “The Game”—that emphasizes the unrelenting power of the status quo and the powerlessness of institutions to change it.²⁶ Police come and go;

CORNER: A YEAR IN THE LIFE OF AN INNER-CITY NEIGHBORHOOD 541 (2d ed. 1998). Still, Simon and Burns do not necessarily agree on whether the Hamsterdam experiment could work in real life. See ALVAREZ, *supra* note 4, at 205 (describing Simon as a proponent of free zones while Burns is more skeptical). Nor does this Article take a position on that question. Rather, for purposes of this Article, Hamsterdam is a device for considering broader questions related to the fringe economy.

23. See C.W. Marshall & Tiffany Potter, “I Am the American Dream”: *Modern Urban Tragedy and the Borders of Fiction*, in THE WIRE: URBAN DECAY AND AMERICAN TELEVISION 1, 8–9 (C.W. Marshall & Tiffany Potter eds., 2009) (“[T]he *Wire* works to confound the line between truth and fiction. Its stories scream of verisimilitude, and the authentic dialogue draws the viewer into a sympathetic consideration of characters who live the sort of lives many viewers will not ever have examined with careful, concerned, critical awareness.”).

24. See Silverman, *supra* note 12, at 486 (noting that the fringe economy is “largely unfamiliar to middle- and upper-income consumers”).

25. See *The Wire: The Target* (HBO television broadcast June 2, 2002).

26. See Clif Mark, “All in the Game”: HBO’s *The Wire*, 7 THE OXONIAN REVIEW OF BOOKS 3 (Spring 2008), <http://www.oxonianreview.org/issues/7->

drug dealers come and go; politicians come and go. No matter. The players change, but The Game stays the same.²⁷ Until Hamsterdam.

A. *An Existential Cop*

Major Bunny Colvin—district commander of Baltimore’s Western District—stands on the brink of retirement.²⁸ A major’s pension and a high-paying security job at Johns Hopkins await.²⁹ Despite his impressive personal accomplishments and the financial security they provide, Colvin remains unsatisfied with his life’s work. Looking at the state of Baltimore, Colvin reflects on his long career, “The city is worse than when I came on. So what does that say about me? About my life?”³⁰ When one of his officers, Dozerman, is meaninglessly shot on a meaningless undercover drug buy, Colvin sadly assesses the meaning of success in the never ending drug war that consumes his district: “Tonight is a good night. Why? Because my shot cop didn’t die. And it hit me. This is what makes a good night on my watch: absence of a negative.”³¹

B. *The Birth of an Idea*

Unwilling to coast into retirement without attempting to address the dysfunction that surrounds him, Colvin conceives the idea of Hamsterdam—three free zones in abandoned areas of the Western District—“away from the residential streets, away from

2/mark.shtml (last visited Dec. 29, 2011) (proposing that “the ‘game’ operates as a metaphor for all institutions” and suggesting that “today’s problems” are the product of our public institutions’ “internal logic” that results in self-corrupting institutions thwarting their own goals of social change and perpetuating the status-quo they were designed to change) (on file with the Washington and Lee Law Review).

27. *See id.*

28. *See The Wire: Hamsterdam* (HBO television broadcast Oct. 10, 2004) (depicting Colvin lunching with Johns Hopkins University officials to discuss his post-retirement employment as a security director at the university).

29. *Id.*

30. *The Wire: All Due Respect*, *supra* note 5.

31. *Id.*

commercial areas, away from schools”—where drug dealers and drug users “can go about their business without any interference” from the Baltimore P.D.³² The impetus for this radical experiment is Colvin’s frustration with how the rhetoric and conduct of the War on Drugs undermines traditional notions of policing:

Dozerman gets shot for some bullshit and that’s when the idea of the free zone, of Hamsterdam, comes to me. This drug thing, this ain’t police work. No, it ain’t. I mean, I can send any fool with a badge and a gun up on them corners and jack a crew and grab vials. But policing? I mean you call something a war and pretty soon, everybody gonna be running around acting like warriors. They gonna be running around on a damn crusade, storming corners, slapping on cuffs, racking up body counts. And when you at war, you need a fucking enemy. And pretty soon, damn near everybody on every corner is your fucking enemy. And soon the neighborhood that you supposed to be policing, that’s just occupied territory.³³

32. See *The Wire: Dead Soldiers*, *supra* note 6. To make this deal work, Colvin promises fire and brimstone on any drug dealers who operate outside Hamsterdam’s confines:

I swear to God, 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 not be just a humble—or a loitering charge. 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.

The Wire: Straight and True (HBO television broadcast Oct. 17, 2004).

33. *The Wire: Reformation*, *supra* note 15. To lay the groundwork for this idea, he gives a lengthy explanation to his officers as to how the brown paper bag revolutionized law enforcement by allowing the police to dedicate their time to the activities most likely to yield the greatest rate of return:

Somewheres, back in the dawn of time, this district had itself a civic dilemma of epic proportion. The city council had just passed a law that forbid alcoholic consumption in public places, on the streets and on the corners. But the corner is, and it was, and it always will be the poor man’s lounge. It’s where a man wants to be on a hot summer’s night. It’s cheaper than a bar, catch a nice breeze, you watch the girls go by. But the law is the law. And the Western cops, rolling by, what were they going to do? If they arrested every dude out there tipping back a High Life, there’d be no other time for any other kind of police work. And if they looked the other way, they’d open themselves to all kinds of flaunting, all kinds of disrespect. Now, this is before my time when it happened, but somewhere back in the ‘50s or ‘60s, there was a small moment of goddamn genius by some nameless smoke hound

C. The Crime Statistics Shuffle

Colvin and other high-ranking commanders in Baltimore's police hierarchy face tremendous political pressure from the mayor and city council to lower crime numbers.³⁴ The numbers themselves are the key, not whether there actually is a decrease in crime.³⁵ Everyone knows that the numbers are fake, the product of creative reporting that frequently mischaracterizes felonies as misdemeanors to paint a picture more palatable to the public. In the week prior to opening Hamsterdam for business, Colvin refuses for the first time to play along and gives a truthful presentation of that week's numbers for his district.³⁶ For this act of honesty, Deputy Commissioner William Rawls ruthlessly and mercilessly eviscerates Colvin in front of the rest of the department's high command for the rise in his statistics.³⁷ The unmistakable message received by everyone in the room: lower the numbers, one way or the another.³⁸

who comes out the Cut Rate one day and on his way to the corner, he slips that just-bought pint of elderberry into a paper bag. A great moment of civic compromise. That small wrinkled-ass paper bag allowed the corner boys to have their drink in peace, and it gave us permission to go and do police work. The kind of police work that's worth the effort, that's worth actually taking a bullet for. Dozerman, he got shot last night trying to buy three vials. Three! There's never been a paper bag for drugs. Until now.

The Wire: All Due Respect, *supra* note 5.

34. See *The Wire: Time After Time* (HBO television broadcast Sept. 19, 2004) (containing a scene where current Mayor of Baltimore Clarence Royce encourages the police to get the murder and felony rates down to damage his electoral opponent's career).

35. See ALVAREZ, *supra* note 4, at 220 (explaining a scene in *The Wire* where district commanders are told that felonies "must drop by five percent and murders must be kept below 275 bodies" and Rawls says, "I don't care how you do it, just fucking do it").

36. See *The Wire: Dead Soldiers*, *supra* note 6 (including the scene where Colvin instructs his men not to cook the criminal statistics report).

37. *Id.*

38. That Rawls would incentivize his commanders to manipulate statistics is par for the course in *The Game*, where institutions rely on spin to maintain their own power:

The "game" operates as a metaphor for all institutions. In addition to its role as adversary in the drug game, the police department is also the setting for a second game of career advancement, which is entirely controlled by appearances. Crime statistics must be shown to

D. Transformation

With drug dealers and drug users confined to the three free zones, the Western District undergoes an urban renaissance. Crime drops 14%, violence lessens, the law-abiding reclaim the streets so long controlled by drug merchants, and community morale blossoms for the first time in ages. Police begin to do real police work instead of chasing corner kids day after day.³⁹ Even the lives of addicts who descend to Hamsterdam improve when community health organizations initiate needle exchanges, blood tests, and condom distribution.⁴⁰

Back at headquarters, Rawls—while happy for the decrease in crime—suspiciously questions the rate of the decrease that Colvin reports, “Seriously, Bunny, I already got the city council asking questions about the [huge numbers drop]. We want to please the mayor, not go to jail behind this shit.”⁴¹

be dropping, whether or not there is any real effect, and anything which might embarrass the higher-ups must be concealed . . . Thus, the explicit aims of public institutions are subverted by internal games that they set up. Even well-intentioned cops are forced to play bureaucratic games in order to survive in their organizations.

Mark, *supra* note 26.

39. The inability of police to devote enough time to criminal law enforcement is a common issue. See Michael R. Dimino, Sr., *Police Paternalism: Community Caretaking, Assistance Searches, and Fourth Amendment Reasonableness*, 66 WASH. & LEE L. REV. 1485, 1486 n.3 (2009) (citing sources that show that only one-fifth to one-third of police activity actually relates to criminal law enforcement).

40. A health-care worker treating the citizens of Hamsterdam expounds on the positive public health benefits of having so many drug addicts concentrated in the same place: “From a public health perspective, there are amazing things happening in the free zones: needle exchanges, blood tests, condom distribution. Most of all, we’re interacting with an adverse community that is largely elusive. We’re even talking some of these people into drug treatment.” *The Wire: Middle Ground*, *supra* note 7.

41. *The Wire: Moral Midgetry* (HBO television broadcast Nov. 14, 2004). Emblematic of the Orwellian nature of crime statistics reporting, Colvin only finds himself on the receiving end of Rawls’s disapproval when he reports the truth, whether good or bad.

E. The Dark Side of Success

The revitalization of west Baltimore is not without costs. Outside Hamsterdam, the streets of the Western District are quiet and peaceful. Inside the free zones, however, horror reigns despite the best efforts of health officials—open and notorious drug use, overdoses, reckless sex, hopped-up junkies, crack pipes, drug needles, nervous suburban kids driving through to pick up supply, no drinking water, no toilets, no electricity, no heat. The Deacon, one of Colvin’s closest friends, chastises Colvin for creating “a great village of pain.”⁴² Colvin defends himself, “Look, they 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.”⁴³ The Deacon is not impressed: “And that place is hell.”⁴⁴

F. Councilman Tommy Carcetti

Councilman Tommy Carcetti is an ambitious white man who wants to be mayor in a majority-black city. He sees crime as the issue that can make this goal a reality. In fact, it is Carcetti’s public posturing on this issue that intensifies Rawls’s focus on the crime stats for each of his commanders. When a skeptical Carcetti learns of the precipitous drop in crime in the Western District, Carcetti goes to Colvin for an explanation. Colvin takes the councilman for a tour, and Carcetti sees for himself that the progress Colvin has made is very real. Then Colvin says, “Let me show you the ugly.”⁴⁵ Carcetti walks through Hamsterdam, sees the mayhem, and realizes the political opportunity before him.⁴⁶ He faces a choice: embrace the very real drop in crime for the good of Baltimore or promote his own career by exposing Hamsterdam to the media? He chooses himself. Cameras converge on the free zones, and Carcetti gives interviews decrying

42. *Id.*; Richard Price, the screenwriter for this episode, explains that the dark side of Hamsterdam shows “how quickly utopian visions can create dystopic hells.” ALVAREZ, *supra* note 4, at 251.

43. *The Wire: Moral Midgetry*, *supra* note 41.

44. *Id.*

45. *The Wire: Middle Ground*, *supra* note 7.

46. *Id.*

the anarchy behind him.⁴⁷ The death of Hamsterdam begins, but Carcetti's career soars. Eventually he becomes mayor, then governor.⁴⁸

G. Mayor Clarence Royce

When Mayor Clarence Royce first learns of Hamsterdam's existence, the audience—conditioned from watching Royce's cynical maneuvers over the first three seasons of *The Wire*—expects him to react quickly to shut it down for the sake of political appearances. Royce, however, becomes intrigued by Hamsterdam's success and debates with his advisors whether there is a way to continue Colvin's experiment.⁴⁹ The more politically minded advisers plead with Royce that entertaining the idea of Hamsterdam is political suicide.⁵⁰ Royce remains curious, though, until the spectacle of the free zones becomes public. Watching news reports of the chaos and the corresponding opportunity these scenes afford his political rivals, Royce immediately understands the futility of his attempt to somehow make Hamsterdam politically viable. His instantaneous reaction: "What the fuck was I thinking?"⁵¹

H. The Fall of A Good Man

The aftermath is fierce and all centers on Colvin. Rawls publicly lambasts him as "amoral, incompetent, and unfit for command" and said that he did what he did "without properly informing his superior offices and without regard to the criminal statutes he was sworn to enforce, . . . disgracing himself and his

47. See *The Wire: Mission Accomplished*, *supra* note 8.

48. See *The Wire: Unto Others* (HBO broadcast television Oct. 23, 2006) (depicting Carcetti's election as mayor); *The Wire: -30-* (HBO broadcast television Mar. 9, 2008) (portraying Carcetti's gubernatorial election).

49. See *The Wire: Middle Ground*, *supra* note 7 (including a scene where Mayor Royce ponders Hamsterdam, saying, "a fourteen percent decline in felonies citywide and I might be untouchable on this. We need to see if there's some way to keep this thing going without calling it what it is").

50. *Id.*

51. *The Wire: Mission Accomplished*, *supra* note 8.

command.”⁵² Colvin’s retirement is downgraded from a major’s pension to a lieutenant’s pension, and the plush job with Johns Hopkins is no more. But Colvin has no regrets: “I just did what I did. Felt right. I’m fine with that.”⁵³

I. Tearing Down Hamsterdam

Mayor Royce immediately provides instructions to destroy Hamsterdam and to do so in a very public way to give himself political cover. An army of police surrounds the free zones, and Rawls gives the order, “Over the top, gentlemen.”⁵⁴ Mass arrests follow, as dealers and junkies find themselves rounded up and placed on buses to be taken away. Camera crews capture the spectacle in all its glory. The message to the public: the police are on the case. The next phase is the actual physical demolition of Hamsterdam. In Rawls’s words: “Come tomorrow, the television reporters get nothing they can stand in front of.”⁵⁵ Bulldozers move in, and all that is left of Hamsterdam is a pile of rubble. After a brief respite, The Game is back and as strong as ever.

III. Hamsterdam and the Inevitability of Markets

Economics 101 teaches that demand and supply meet each other to create market equilibrium.⁵⁶ In the context of the drug war, the most important application of this truth—and the reason enforcing the prohibition on illegal drugs has proven so vexing a problem of public policy—centers on the following reality: People want drugs.⁵⁷ Colvin’s realization that he was powerless to stop

52. *Id.*

53. *Id.*

54. *Id.*

55. *Id.*

56. SMITH, *supra* note 14, at 65 (noting that “the quantity of every commodity brought to market naturally suits itself to the effectual demand” and that it is in the suppliers’ interest not to exceed that demand, and in the buyers’ interest not to have a shortage of goods).

57. See Harvey Rishikof, *Long Wars of Political Order—Sovereignty and Choice: The Fourth Amendment and the Modern Trilemma*, 15 CORNELL J.L. & PUB. POL’Y 587, 590 (2006) (“The foes in the War on Drugs provide a service and product that American and European citizens are demanding.”).

this market force leads him to contemplate alternatives to the tried-and-failed police round-up strategies of the past. The first lesson, therefore, that *Hamsterdam* teaches about low-value markets is this: *Markets arise wherever there exists market demand.*

In the universe of *The Wire*, however, the strategy of decreasing the market demand for drugs goes largely unaddressed.⁵⁸ Instead, the default position of the Baltimore police is to attack the drug problem from the supply side by taking out the drug dealers that populate the city's street corners. The success of this philosophy depends on whether the threat of arrest and subsequent imprisonment will be enough to deter potential replacements for the corner vacancies created by these arrests. And therein lies the rub. Deterrence simply does not work. As a result, the availability of willing workers greatly exceeds the capacity of the police to remove dealers from the street.

The reasons for this steady supply of drug labor are easy to understand from an economic perspective. There are two options for youth growing up in high-crime, high-drug areas such as Baltimore: (1) become a part of the drug trade (Choice A) or (2) pursue other life opportunities (Choice B). There is no third choice. It is easy for those of us living outside the inner city to confidently assert that Choice A is obviously bad. But Choice A does not exist in a vacuum. The question is *not*: is Choice A bad? Rather, the question is: is Choice A better than Choice B? In other words, the value of becoming a drug dealer—including the risks of imprisonment and death—cannot be assessed without determining the value of the opportunities prospective drug dealers give up by living outside the bounds of the law.⁵⁹ Sadly, the reality is that the lack of perceived value of Choice B makes it economically rational for many people to join the drug trade:

It is easy enough to say that 'crime doesn't pay,' but the real question is: Does not pay whom—and compared to what? It is

58. One notable exception is the five-season journey of Bubbles, a heroin junkie and police informant, who finally becomes clean by series' end after many starts and stops. See *The Wire*, *supra* note 1.

59. See Price V. Fishback, Ryan S. Johnson & Shawn Kantor, *Striking at the Roots of Crime: The Impact of Welfare Spending on Crime During the Great Depression*, 53 J.L. & ECON. 715, 732 (2010) (explaining the link between employment prospects and crime).

doubtful Bill Gates could have done nearly as well as he has by becoming a burglar or even a hit man for organized crime, but those who pursue these criminal occupations are unlikely to have had the same alternatives that Bill Gates had because of his particular talents and circumstances. Given the low educational levels of many who become career criminals, crime may well be their best-paying option. Given the short time horizons of many of those who make crime their occupation—especially young people and people from lower social classes—such things as selling drugs may be very lucrative in stage one, whether or not it leads to prison in stage two or perhaps never living to see stage two.⁶⁰

In light of the lack of attractive opportunities elsewhere for potential drug players to invest their lives, the police-the-corners strategy that seeks to remove drug dealers from the streets seems doomed from the start. Take one dealer off the street, and another will take his place for no other reason than the fact that he has nowhere else to go.⁶¹ Indeed, that the very real risk of death itself does not deter new foot soldiers from serving in the drug war

60. THOMAS SOWELL, *APPLIED ECONOMICS: THINKING BEYOND STAGE ONE* 47 (2004). Just as a dollar today is more valuable than a dollar tomorrow, the drive for satisfaction in the present drives many criminals to discount the costs of prison in the future. See Richard A. Posner, *An Economic Theory of Criminal Law*, 85 COLUM. L. REV. 1193, 1214 (1985) (observing that “a criminal . . . will value his future consumption, which imprisonment will reduce, less than his present consumption”). To the extent that a young person believes that he will die young anyway, the valuing of present preferences will only accelerate.

61. Elijah Anderson ties the lack of meaningful economic opportunities to a broader sense of alienation that makes many in the inner city easy prey for recruitment by drug dealers:

It must be continually underscored that much of this violence and drug activity is a reflection of the dislocations brought about by economic transformations [W]here the wider economy is not receptive to these dislocated people, the underground economy is [T]he facts of race relations, unemployment, dislocation, and destitution create alienation, and alienation allows for certain receptivity to overtures made by people seeking youthful new recruits for the drug trade.

ELIJAH ANDERSON, *THE CODE OF THE STREET: DECENCY, VIOLENCE, AND THE MORAL LIFE OF THE INNER CITY* 120 (2000); see also James Braxton Peterson, *Corner-Boy Masculinity: Intersections of Inner-City Manhood*, in *THE WIRE: URBAN DECAY AND AMERICAN TELEVISION*, *supra* note 23, at 110 (“From the corner-boy perspective, at the crossroads of lack and desire, selling drugs is no different from selling cigarettes or alcohol except that some trades are arbitrarily deemed legal and others are not.”).

undermines any claim that increased criminalization efforts—including an even greater emphasis on incarceration⁶²—will stop the ready supply of supply-side labor willing to work the corners of Baltimore and elsewhere.⁶³

Instead of investing time and energy into making Choice A less attractive, a more compelling supply-side answer would be to increase the meaningful opportunities associated with Choice B.⁶⁴ That solution, however, involves fixing the seemingly intractable problem of inner-city schools, which is the tragic subject of *The Wire* in Season Four—the single greatest season of television history to date.⁶⁵ And even if a solution to the education problem

62. Incarceration appears to represent the status quo in drug enforcement. In 1990, there were 58,659 individuals under the jurisdiction of the Federal Bureau of Prisons for drug-related offenses. In 2009, that number had almost quadrupled to 206,784. See U.S. DEPARTMENT OF JUSTICE, SOURCEBOOK OF CRIMINAL STATISTICS 2003 tbl.6.0023.2009, <http://www.albany.edu/sourcebook/pdf/t600232009.pdf> (last visited Jan. 11, 2012) (on file with the Washington and Lee Law Review).

63. See Rishikof, *supra* note 57, at 604 (“In the world of drugs, personnel replacement, even with long-term incarceration, has been easy.”); see also Mamber, *supra* note 16, at 632 (noting that “the incarceration of street-level dealers, kingpins, and foreign producers only incentivizes others to replace them, because the market maintains its attractiveness”).

64. Nobel laureate Gary Becker expands on this idea by observing that there are more ways of stopping crime than merely relying on a law and order framework:

[T]he economic approach to crime does not suggest a focus on law and order to reduce crime. It also encompasses other more fundamental, or indirect, ways to attack crime. There’s no question that we should devote resources to improving the opportunities in the legal sector for teenagers, the poor, and other groups who are more likely otherwise to turn to crime. One action that I think is important for improving opportunities is to improve the qualities of schools, especially in inner cities.

Gary S. Becker, *The Economics of Crime*, 12 CROSS SECTIONS 8, 15 (1995).

65. The website Metacritic, which compiles rankings of television critics across the country, ranks Season Four of *The Wire* as the greatest television season of all-time with a rating of 98 out of 100, including 17 out of 21 perfect scores. See *The Wire: Season 4*, METACRITIC.COM, <http://www.metacritic.com/tv/the-wire/season-4/critic-reviews> (last visited Jan. 11, 2012) (on file with the Washington and Lee Law Review). Season Four tracks the lives of four eighth-grade boys in West Baltimore—Dukie, Michael, Randy, and Namond. Watching their journey unfold is touching, infuriating, depressing, and deeply affecting all at the same time. See *The Wire: Season Four* (HBO television broadcast Sept. 10, 2006–Dec. 10, 2006).

could be crafted, the desired effect on supply may not materialize. Enhancing the attractiveness of nondrug-related opportunities increases the price that would-be drug dealers would demand for their labor.⁶⁶ Would the market meet this demand? Probably. The reason: Addicts, by virtue of their addiction, are insensitive to price and will likely pay enough money to make supply of drugs economically attractive for drug dealers.⁶⁷ Therefore, approaching the problem from the supply-side fails once again.⁶⁸

Because markets arise whenever there exists market demand, eliminating the market for illegal drugs requires taming the desire for drugs from the demand side. For this reason, Simon and Burns

66. Stated differently, the opportunity cost of forgoing these new, legitimate prospects becomes higher.

67. See Harp, *supra* note 13, at 1670 (stating that “there are good reasons to believe that demand for drugs is inelastic with respect to the ‘tax’ of illegality”). Nevertheless, the concept of satisficing—which holds that “rather than selecting the ‘best’ alternative, people select the first option that meets their ‘aspiration level,’ some satisfactory minimum threshold”—suggests that not all would-be drug dealers would seek to maximize their welfare by chasing the higher profits available to them in the drug trade. See Laura Miller, *Election By Lottery: Ballot Order, Equal Protection, and the Irrational Voter*, 13 N.Y.U. J. LEGIS. & PUB. POLY 373, 384–85 (2010) (defining “satisficing”). Instead, the improved availability of legal means to achieve an acceptable quality of life—i.e., the “satisfactory minimum threshold”—would no doubt compel many more individuals than do currently to live within the bounds of the law. *Id.* A classical economist would counter, however, that as long as demand for drugs is truly inelastic, this movement away from illegality becomes self-defeating, as scarce labor increases the market price for such labor, which consequently would attract the necessary amount of labor needed to work the corners. Regardless of how these economic theories would play out in the real world, the deplorable state of schools and family structures in high-crime areas means we are, unfortunately, at least a generation away from providing the minimum level of meaningful alternatives that the choice of satisficing requires.

68. Here, I am only talking about supply-side solutions on the local level at the point of retail distribution. A different supply-side approach focuses on preventing drugs from entering the country in the first place. Of course, experience has shown that these efforts fail as well:

Drug interdiction efforts have failed to reduce drug availability in the United States and as efforts to target drug production in certain countries increase, new suppliers and drug trafficking organizations have emerged to replace displaced drug producers. Over the years, drug interdiction efforts have also failed to destabilize America’s illegal drug market since drug prices remain low and drug purity levels remain at all time highs.”

Margarita Mercado Echegaray, *Drug Prohibition in America: Federal Drug Policy and Its Consequences*, 75 REV. JUR. U.P.R. 1215, 1273 (2006).

believe that “a societal—if not legal—acceptance of the drug problem as a health issue and not a problem for law enforcement is the only way to begin.”⁶⁹ As part of this shift in emphasis, they urge “using the resources of the drug war to economically reintegrate one America with the other.”⁷⁰ Because the market for illegal drugs arises because of demand, this focus on the drug user is sound.⁷¹ Still, the knowledge that only a demand-side solution can quell the market for illegal drugs does not mean that crafting such a solution becomes any easier, and it would be inaccurate in any event to view Hamsterdam as a policy designed to decrease consumer demand for illegal drugs.

Bunny Colvin’s twofold mission was something else entirely: (1) to free up the time of his officers to devote more energy to community policing and real police work and (2) to contain drug dealing by limiting it to the free zones, away from the residential and business areas in his district. Colvin’s intent, however, does not tell the whole story. By concentrating drug users in a few places, Hamsterdam allows the medical community to locate and help at-risk people in desperate need of assistance. This vision contends that legalization’s trade-off of a net increase in drug use⁷² for increased public health access to drug users is a trade worth making.⁷³ Is this view correct? That question is for others to answer.

69. ALVAREZ, *supra* note 4, at 205.

70. *Id.* At this point, supply-side and demand-side solutions for dealing with the drug crisis perhaps converge in that enhanced economic opportunities for at-risk communities simultaneously decrease the incentives of individuals to join the drug business and provide a hope for the hopeless that may ward off a descent into drug use.

71. Incarceration of users is another demand-side solution that has proven ineffective. One can surmise that the same demons that prompt one to become a junkie lead to indifference toward imprisonment. In economic terms, the present value of consuming drugs at the moment of use is so overpowering that it dwarfs any concerns about future imprisonment in the mind of the drug user.

72. Legalization of drugs would certainly increase drug consumption, at least at the recreational level. See POSNER, *supra* note 19, at 245 (noting that “the demand for addictive drugs appears to be elastic rather than inelastic”). The risk that legalization of drugs would serve to spike hard-core drug use—and the negative individual and societal consequences that undoubtedly would follow—may very well outweigh the benefits, if any, obtained through decriminalization. Weighing that balance is far beyond the scope of this Article.

73. The public health benefits are not limited to treating addicts for their addictions. Access to addicts also helps to minimize the spread of AIDS. As

The dynamics of drug markets on display in this analysis has relevance for students of the fringe economy. Like the choice to use drugs, deciding to utilize the services of fringe economic players screams out, “Bad idea.”⁷⁴ Consumer advocates and scholars present a compelling case concerning the financial toll the fringe economy exacts on its customers.⁷⁵ Yet, just as millions continue to use drugs in the face of their seeming negative utility, resort to the products and services of the fringe economy remains brisk.⁷⁶ Demand, for whatever reason, persists.⁷⁷

Mamber observed:

The current zero-tolerance criminalization policy has created a catastrophic public health crisis. Without needle exchange programs and access to clean needles, the AIDS epidemic continues to spread. Thirty-six percent of AIDS cases in the United States can be traced back to intravenous drug use. Syringe exchange decreases risky injection behavior by as much as 73%.

Mamber, *supra* note 16, at 637.

74. An example of the seeming illogic sometimes at work here is the pursuit of payday loans by people who otherwise have money available to them. See Oren Bar-Gill & Elizabeth Warren, *Making Credit Safer*, 157 U. PA. L. REV. 1, 45 (2008)

Another recent study . . . found that a majority of payday loan applicants had more than \$1,000 available in liquid assets. While paying a 400% interest rate may be rational, absent other options, under conditions of extreme financial distress, it is very difficult to rationalize when the borrower can draw on substantial liquid assets.

75. *Id.* at 44–45 (payday loans); Lynn Drysdale & Kathleen E. Keest, *The Two-Tiered Consumer Financial Services Marketplace: The Fringe Banking System and Its Challenges to Current Thinking About the Role of Usury Laws in Today’s Society*, 51 S.C. L. REV. 589, 605–10 (2000) (fringe lenders); Ronald Paul Hill, *Stalking the Poverty Consumer: A Retrospective Examination of Modern Ethical Dilemmas*, 37 J. BUS. ETHICS 209, 214–15 (2002) (fringe lenders); Mann & Hawkins, *supra* note 13, at 881–82 (payday lending); Michael A. Stegman & Robert Faris, *Payday Lending: A Business Model That Encourages Chronic Borrowing*, 17 ECON. DEV. Q. 8, 19–21 (2003) (payday lending); Amanda Quester & Jean Ann Fox, *Car Title Lending: Driving Borrowers to Financial Ruin*, CONSUMER FEDERATION OF AMERICA 6–7 (Apr. 2005), available at www.consumerfed.org/pdfs/driving_borrowers_rpt.pdf (title pawns).

76. See Jim Hawkins, *Renting the Good Life*, 49 WM. & MARY L. REV. 2041, 2087 (2008) (“It has been well documented that demand for consumer credit is constant.”); Todd J. Zywicki, *Consumer Use and Government Regulation of Title Pledge Lending*, 22 LOY. CONSUMER L. REV. 425, 425 (2010) (noting growth in recent years).

77. Part of the reason consumers resort to the fringe economy is that doing so is sometimes rational. See *Midwest Title Loans, Inc. v. Mills*, 593 F.3d 660, 664 (7th Cir. 2010):

As Hamsterdam teaches, the persistence of this demand means that a market—in one shape or another—will arise to meet this need.⁷⁸ When contemplating how to handle the problems posed by the fringe economy, policymakers must be ever mindful of this reality. This realization is important because the natural instinct may be to view questionable businesses that operate on the fringe as being the great driver of the ills that plague those on the lower end of the economic ladder. Fringe businesses, however, are a symptom, not a cause. Removing this symptom, and leaving undisturbed the core reasons that drive people to the fringe economy in the first place, will not produce lasting change. Why? Because prohibition does not kill the market for services offered in the fringe economy. It only moves the market underground. Nor is such subterranean movement all that unique, as the black market in the United States currently flourishes:

[T]here is more to the U.S. economy, much more, than meets the eye. In addition to America's famous corporations and brands, the invisible hand has produced a largely invisible economy, secretive and well-hidden, with its own labor demand, price structure, and set of commodities. "Black," "shadow," "irregular," "informal," "illegal," "subterranean," "underground"—a variety of adjectives have been used to describe this other economy. Although defined in numerous ways, at its simplest the American underground is where economic activities remain off the books, where they are unrecorded, unreported, and in violation of the law. These activities range from the commonplace (an electrician demanding payment in cash and failing to declare the payment as income) to the criminal (a gang member selling methamphetamine). They include moonlighting, check kiting, and fencing stolen goods; street vending and tax evading; employing day laborers and child laborers; running sweatshops and chop shops; smuggling cigarettes, guns, and

An annual interest rate of 300 percent is astronomical. But a person who borrows \$5,000 at that rate and repays it two weeks later pays only \$577 in interest, and the loan may have enabled him to avert foreclosure on his house, or some other dire event that would have cost him more than \$577.

78. In this way, drugs are just like any other commodity in a capitalist economy. See Jason Read, *Stringer Bell's Lament: Violence and Legitimacy in Contemporary Capitalism*, in *THE WIRE: URBAN DECAY AND AMERICAN TELEVISION*, *supra* note 23, at 125 (arguing that "[i]n *The Wire*, the illegal drug trade serves as a sustained allegory for capitalism").

illegal immigrants; selling fake Rolexes, pirating CDs. Economists disagree about the size of the underground economy and how to measure it. There is general agreement, however, on two points: America's underground economy is vast—and most of its growth occurred in the past thirty years.⁷⁹

Like the market inevitability that prompted Colvin to give birth to Hamsterdam, this litany of black-market operations demonstrates the power of markets to burst through any walls that law attempts to use as a means of blocking their growth.⁸⁰ Markets—legal or illegal—arise whenever market demand exists. Fringe-economy policymakers should, therefore, be extremely cautious in fashioning supply-side solutions that call for prohibition.⁸¹

This caution does not necessarily mean that prohibition is never appropriate, only that the market-shifting consequences of prohibition should be factored into the judgment-making process.⁸² For example, a market exists for trafficking humans, including children.⁸³ Given the vast human costs imposed by this deplorable practice and the force used to perpetuate it, prohibition of this market is the only choice any legitimate government can make.⁸⁴ That said, experience reveals that

79. SCHLOSSER, *supra* note 13, at 4.

80. That these unsanctioned markets have exploded in recent times is not surprising because “[d]ecentralization and the advance of technology has revolutionized life at all levels and pushed power downwards to individuals.” Lance McMillian, *The Death of Law: A Cinematic Vision*, 32 U. ARK. LITTLE ROCK L. REV. 1, 32 (2009). This movement of power away from the state toward the individual naturally benefits, on average, those who want to engage in underground activities. *The Wire* itself derives its name from the wiretapping efforts the police use in their attempts to arrest the drug dealers. As the seasons of the series progress, the ever-greater technological sophistication of the dealers makes the work of the police—especially as they operate under the constraints of the Constitution—harder and harder.

81. See *infra* Part III (discussing the need for caution in calling for supply-side solutions using prohibition to address the fringe economy).

82. See POSNER, *supra* note 19, at 224–25 (arguing that “optimal criminal sanctions” require deterring criminal behavior by making the prohibited activity so costly that an offender “is made worse off by committing the act”).

83. See Jonathan Todres, *Moving Upstream: The Merits of a Public Health Law Approach to Human Trafficking*, 89 N.C. L. REV. 447, 456 (2011) (estimating that four million people are trafficked annually).

84. See *id.* at 459 (“[L]aw has an expressive function, and criminal law on

prohibition of human trafficking has not been as effective as one would hope.⁸⁵ Similarly, while prohibition may be a desirable method for dealing with certain features of the fringe economy, policymakers should not fool themselves that banning a practice via legislative fiat magically solves the problem they seek to address.⁸⁶ Demand continues—and supply thereby follows—even after legal markets become illegal ones.⁸⁷

IV. Hamsterdam and the Futility of Prohibition

The first lesson that Hamsterdam teaches is that markets are inevitable whenever demand for them exists.⁸⁸ So what do we do with this information? Even though demand-side solutions theoretically hold out the best promise of success—after all, eliminate demand and you eliminate the market—reality must intervene when crafting answers to entrenched problems.⁸⁹ And the reality is sobering. The market for drugs, the market for check-cashing services, the market for car-title pawns, the rent-to-own market, the market in human trafficking—none of these markets are going anywhere in the foreseeable future.⁹⁰ Because markets exist wherever there is demand, and demand for disfavored markets figures to remain strong for the foreseeable

human trafficking expresses a societal view that such acts are deplorable and unacceptable.”).

85. See *id.* at 451 (“More than a decade of concerted [law-enforcement-centric] efforts by governments, international organizations, and civil society has produced little real progress in terms of reducing the incidence of human trafficking.”).

86. See KARGER, *supra* note 13, at 198–99 (arguing that “choking out [the fringe economy] sector would only create an unfair advantage for mainstream financial institutions that would be likely to use this opportunity to institute their own brand of predatory economic activity”).

87. See NAYLOR, *supra* note 13, at 42 (noting that with supply-side regulation, such as prohibition, “it is rare, perhaps impossible, to find a black market successfully tamed”).

88. See *supra* notes 57–58 and accompanying text.

89. See KARGER, *supra* note 13, at 18–27 (identifying specific factors that have increased demand for fringe-market products, including welfare reform, immigration, and the Internet).

90. See Brooks, *supra* note 13, at 995 (“Pawnbrokers and other casual creditors have been drawn to cities as long as there have been cities.”). Many of these markets have a timeless quality to them. *Id.*

future, the critical policy question centers not on how to rid society of these markets, but rather on the best way to contain their negative effects.⁹¹

Hamsterdam's uniqueness lies in how Bunny Colvin answers this question in the context of the never-ending drug war. The brief success of Colvin's quasi-legal, free-zone approach underlies the second lesson that Hamsterdam teaches: *Legalization and regulation, not prohibition, represent the best method for controlling the negative externalities of low-value markets.*

Colvin's key insight on how to negate the effects of drugs in his community centers on one word: containment.⁹² But containment as a strategy faces significant obstacles in a world where the police chase drug dealers into the shadows. By bringing the dealers into the light by legalizing their activities within the free zones, Hamsterdam encourages the dealers to contain themselves and submit to the regulations Colvin sets out for them.⁹³ The dealers accept this deal because it spares them from the threats of imprisonment, supply disruptions, and violent turf wars.⁹⁴ Through this process, West Baltimore is transformed.⁹⁵ Dealers are happy; junkies are happy and receive the medical attention they need; the law-abiding of the community are happy; violence abates; and the police return to the business of real police work.⁹⁶

91. See *id.* at 999 (suggesting that changes such as increasing the flow of information in fringe economy practice would decrease the sector's negative effects).

92. See *supra* note 32 and accompanying text (explaining that Colvin's strategy involved containing local drug dealing to "three free zones," known as Hamsterdam).

93. See *supra* note 32 (containing Colvin's direct address to local drug dealers, wherein Colvin explicitly promises that the police will not interfere with drug dealing that occurs within Hamsterdam).

94. *Supra* note 32 and accompanying text.

95. See *supra* notes 39, 72–73 and accompanying text (describing the positive effects resulting from Colvin's Hamsterdam).

96. *Id.* This last point may be the most important to Colvin as he winds down his long career as a police officer. Colvin's frustration that political decisions undermine the real work of the police—thereby harming the rest of society—is a recurring theme of the series. See Ryan Brooks, *The Narrative Production of "Real Police,"* in *THE WIRE: URBAN DECAY AND AMERICAN TELEVISION*, *supra* note 23, at 70 (observing that *The Wire* "stages a series of conflicts between the rank-and-file and the brass as the conflict between 'good police work'—which connotes pursuing order in reality . . . —and pursuing order

This metamorphosis is not all joy and sunshine, however. The free zones themselves are dens of chaos and depravity.⁹⁷ Freed from any fear of legal sanction, the inhabitants of Hamsterdam openly debase themselves, choking on the freedom that Hamsterdam offers.⁹⁸ This transparency eventually reaches the media, and the ugliness of drug use is on display in its full horror.⁹⁹ Public revulsion at the spectacle leads to repression, and the remnants of Hamsterdam are bulldozed into obscurity.¹⁰⁰

In this way, the story of Hamsterdam shows the good and the bad, presenting the audience with this choice: should drugs be treated as a regulatory problem or a law-enforcement problem? Neither solution is perfect. The costs of the drug war are immense; the costs of legalization—increased drug use, most notably—are very real, as well.¹⁰¹ The absence of an ideal option,

in appearance only, a narrative designed merely to send messages to specific audiences”).

97. See *The Wire: Moral Midgetry*, *supra* note 41 (depicting increased criminal activity and concentration of drug use in Hamsterdam).

98. *Id.* In this episode even the local drug dealers voice their anger toward the police for not protecting them from armed robbery within Hamsterdam. *Id.* A local deacon, upon observing Hamsterdam for the first time, calls the zone “a great village of pain.” *Id.*

99. See *The Wire: Mission Accomplished*, *supra* note 8 (depicting the media’s coverage of Hamsterdam and the resulting outrage from communities and politicians over Colvin’s experiment).

100. *Id.*

101. See STEPHEN B. DUKE & ALBERT C. GROSS, *AMERICA’S LONGEST WAR: RETHINKING OUR TRAGIC CRUSADE AGAINST DRUGS* 1 (1993) (identifying the “difference between the costs of drug use per se and the costs of efforts to prevent drug consumption” and suggesting that “[m]ost of the current rhetoric obscures the difference”). Former drug czar Bill Bennett stands as one of the most prominent voices against legalization:

Starting with the basics, keeping drugs illegal is one of the best ways to keep drugs out of the hands—and brains—of children. We know three things here: First, children who don’t use drugs continually tell us one of the reasons they don’t is precisely because they are illegal Second, keeping drugs out of the hands of children is the best way to prevent drug addiction generally, as study after study has confirmed that if we keep a child drug free until age 21, the chances of use in adulthood are next to zero. Third, we don’t need to guess at hypothetical legalization schemes. Our experience with legally prescribed narcotics has already proven it, and we now have an epidemic. This, despite doing everything the theorists have asked, from oversight to regulation to prescription requirements.

William J. Bennett, *Why Barney Frank and Ron Paul Are Wrong on Drug*

however, does not absolve decision makers from the responsibility of making tough choices.¹⁰² Here, *The Wire*'s distinctive point of view comes through. Even though careful to show not only the successes but also the dark side of Hamsterdam, *The Wire* clearly nets out on the side that legalization represents a better policy approach than prohibition.¹⁰³ Through the framing of the narrative, the audience joins in this conclusion:

Viewers follow the highs and lows of Hamsterdam all season long, becoming increasingly invested in the experiment's success. We have become frustrated with the failures of the police department and, like Colvin, see Hamsterdam as a potential, though radical, solution. But by the season finale, Hamsterdam is crawling with indignant reporters and politicians looking to capitalize on the self-destructive choices of others. We see Deputy Commissioner William Rawls joyfully give the order "Over the top gentlemen!" as he blares "Flight of the Valkyries" from his squad car—a nod to the famous scene in Francis Ford Coppola's *Apocalypse Now* (1979) in which American soldiers appear to enjoy firebombing a village of Vietnamese women and children. In the version of this scene in *The Wire*, hoppers and junkies are tackled mid-run, squad cars corner their prey, and one addict is even pulled out of a vacant building with his pants down. The viewer witnesses an orgy of supposed justice both at the street level and from above, since local news stations have deployed helicopters to capture the story.¹⁰⁴

Legalization, CNN (June 30, 2011), http://articles.cnn.com/2011-06-30/opinion/bennett.drug.legalization_1_drug-legalization-illegal-drugs-drug-rehab-center?_s=PM:OPINION (last visited Dec. 21, 2011) (on file with the Washington and Lee Law Review).

102. See Alasdair McMillan, *Heroism, Institutions, and the Police Procedural*, in *THE WIRE: URBAN DECAY AND AMERICAN TELEVISION*, *supra* note 23, at 55–56 (“Unlike the simple homicide cases that are the staples of most [police] procedurals, drug cases in *The Wire* offer no easy cathartic resolution.”). Part of *The Wire*'s realism lies in its refusal to cater to the typical television device of a happy, settled ending. *Id.* Real life is not so simple.

103. See *The Wire: Reformation*, *supra* note 15 (containing Colvin's supervisor's reaction to Hamsterdam: “I got to give it to you, a brilliant idea. Insane and illegal, but stone fuckin' brilliant nonetheless”).

104. Amanda Ann Klein, “*The Dickensian Aspect*”: *Melodrama, Viewer Engagement, and the Socially Conscious Text*, in *THE WIRE: URBAN DECAY AND AMERICAN TELEVISION*, *supra* note 23, at 182.

The case for legalization made by *The Wire* in dramatic form has also been advanced by many scholars and commentators.¹⁰⁵ The former mayor of Baltimore, Kurt Schmoke, has also argued in favor of legalization.¹⁰⁶ Proponents of this new approach see in decriminalization the promise of less violence—here and abroad,¹⁰⁷ a decrease in the spread of AIDS,¹⁰⁸ the reduction of property crime committed by drug addicts,¹⁰⁹ treatment of these

105. See BUCKLEY, *supra* note 13, at 405 (“A conservative should evaluate the practicality of a legal constriction . . . I came to the conclusion that the so-called war on drugs was not working, and . . . we should look into what effects that war has, a canvass of the casualties.”); DUKE & GROSS, *supra* note 101, at 231 (“Drug prohibition has not worked in the past, does not work now and will not work in the future. Recognition of that truth eventually will force drug-policy makers to legalize or at least de facto decriminalize the drugs now prohibited.”); Harp, *supra* note 13, at 1692 (“[W]ere drugs legal, Mexican cartels and their ilk would be bankrupted overnight. No one would buy a single gram of roughly processed, contaminated drugs off the street . . . The black market would cease to exist. With one stroke, the war in Mexico would be ended.”) SCHLOSSER, *supra* note 13, at 73 (arguing that decriminalizing marijuana is “the first step toward a rational drug policy” and would cause immediate benefits, including diverting law enforcement resources and funds to addressing more serious and dangerous crimes); Erik G. Luna, *Our Vietnam: The Prohibition Apocalypse*, 46 DEPAUL L. REV. 483, 484–85 (1997) (“The drug war . . . is championed by the gentry of a previous generation. They are unmoved by empirical data and pragmatic suggestions; anything short of absolute prohibition is deemed ‘morally scandalous.’ Rhetoric replaces reason, while lurid claims drown out scientific evidence.”).

106. See Kurt L. Schmoke, *An Argument in Favor of Decriminalization*, 18 HOFSTRA L. REV. 501, 506 (1990) (arguing that prohibiting drugs “has not only failed to solve the drug abuse problem, but has made the problem worse” and recommending “a measured and carefully implemented program of drug decriminalization based on the public health system”). Schmoke observes:

[T]wo inescapable facts . . . have persistently hampered the federal government’s attempts to stamp out narcotics use through prohibition. First, drug addiction is a disease and addicts need medical care. Second, in the absence of access to legitimate sources of drugs, addicts will look to the criminal underworld for the drugs they cannot otherwise obtain.

Id. at 501–02.

107. See Harp, *supra* note 13, at 1670 (explaining that violence is “the only mechanism for adjudicating contractual disputes and enforcing industry norms” in black markets). If drugs were legal, then violence would decrease because “[t]here would be nothing to fight over.” *Id.* at 1692.

108. See Mamber, *supra* note 16, at 637 (arguing that “[t]he current zero-tolerance criminalization policy has created a catastrophic public health crisis” because the lack of access to clean needles causes AIDS to spread).

109. See BUCKLEY, *supra* note 13, at 407 (estimating the value of goods

same addicts,¹¹⁰ reimagining of law-enforcement priorities,¹¹¹ and a cessation to the mass incarceration of American citizens.¹¹² Prohibition prevents the realization of these goals because it drives both drug dealers and drug users underground, where violence—not law—sets the governing norms.¹¹³ Hamsterdam’s second lesson crystallizes around this point: Regulation succeeds where criminalization fails because legal markets are much easier to control through the use of law than are black markets.¹¹⁴

This insight has relevance for attempts to deal with the economic distress that accompanies many low-value, fringe markets. For example, in the context of repetitive payday lending, one of the most persistent trouble spots of the fringe economy, there are four broad policy options:

First, policymakers might conclude that the market is inherently objectionable, and thus that laws should be enacted that in practice prohibit payday lending Second, policymakers might conclude that the industry should be tolerated, but only if it can succeed without depending on a regular practice of repetitive lending. Third, policymakers might conclude that, on balance, the market should be tolerated but that the potential for abuse is sufficient to justify some form of intrusion or supervision of the market. . . . [Fourth,] [w]e note in passing the possibility that policymakers might conclude that the costs of any plausible regulatory

stolen by addicts to be \$10 billion in property and \$1,000 in each victim’s pain).

110. See SCHLOSSER, *supra* note 13, at 73 (suggesting that funds currently used to prosecute marijuana dealers can be diverted to providing substance-abuse treatment).

111. See BUCKLEY, *supra* note 13, at 407 (estimating if drugs were legalized, then 400,000 policemen could focus on other criminal activities).

112. See *id.* at 408–09 (arguing that “civil justice” calls for drug policies that consider the negative effects that illegalization has on law-abiding citizens, as well as the “astonishing legal weapons” available to prosecute drug possession which could be diverted to prosecuting other crimes); Mamber, *supra* note 16, at 629 (“[Z]ero-tolerance criminalization policy . . . has created a whole new set of problems, including . . . an overcrowded prison system filled disproportionately with people of color.”).

113. See *supra* note 16 and accompanying text (explaining the important role of violence in regulating the illegal drug market); DUKE & GROSS, *supra* note 101, at 110–13 (describing how illegal drug markets give rise to systemic violence and proliferation of deadly weapons).

114. See DUKE & GROSS, *supra* note 101, at 105 (concluding from a historical review of drug policy that “[o]ur prohibition experiment roiled up what had been a relatively benign drug market”).

intervention are likely to exceed the benefits, and thus, that no regulation is appropriate. This approach has not found favor in any jurisdiction of which we are aware¹¹⁵

In assessing this cafeteria of choices—prohibition of the market, prohibition of certain products in the market, regulation, or laissez faire—Hamsterdam cautions against the first two categories of proposals that institute blanket bans on particular markets or certain products in the market.¹¹⁶ And in fact most states do follow the third model of regulation.¹¹⁷ Still, there is a growing number of calls to ban the practice of payday lending.¹¹⁸ Given the questionable practices of many payday lenders, the impulse to ban payday lending outright has obvious appeal.¹¹⁹ But banning a market leaves demand unchanged, and this demand too often leads consumers to even more unsavory markets than the one just outlawed.¹²⁰ Even when thwarted payday borrowers do not descend into the black market to utilize the services of loan sharks, prohibition of payday lending still produces other dire financial outcomes for the people whom good-intentioned reformers hope to help.¹²¹ States such as Georgia and

115. Mann & Hawkins, *supra* note 13, at 880–81.

116. *See supra* note 33 and accompanying text.

117. *See* Mann & Hawkins, *supra* note 13, at 881 (explaining that “[r]egulated tolerance of some form has been chosen in the bulk of American jurisdictions”).

118. *See* Christopher Choe, *Bringing in the Unbanked Off the Fringe: The Bank on San Francisco Model and the Need for Public and Private Partnership*, 8 SEATTLE J. FOR SOC. JUST. 365, 394 (2009) (describing recent legislative efforts “to effectively ban, or severely limit, payday lending by capping APR”); Robert H. Frank, *Payday Loans Are a Scourge, But Should Wrath Be Aimed at the Lenders?*, N.Y. TIMES, Jan. 18, 2007, at C4 (arguing that “easy credit access” is like “heroin and cocaine” and that pressure should be applied to legislators to change laws).

119. *See* Choe, *supra* note 118, at 394 (stating that voters in several states recently approved measures to ban payday lending).

120. *See* Zywicki, *supra* note 76, at 456 (explaining studies showing that “stricter regulation of consumer credit, and thus reduced access by higher-risk borrowers to legal credit” increases the incidences of loan-sharking).

121. In this regard, prohibition encompasses more than a simple ban. Sometimes regulations erect barriers so high that they make a market impossible and create a quasi-prohibition, which has the same effect of driving people to different markets. *See* Hawkins, *supra* note 76, at 2108 (discussing usury limits as effective bans).

North Carolina that have banned payday lending outright have seen these negative effects of prohibition firsthand:

Georgians and North Carolinians do not seem better off since their states outlawed payday credit: they have bounced more checks, complained more about lenders and debt collectors, and have filed for Chapter 7 (“no asset”) bankruptcy at a higher rate. The increase in bounced checks represents a potentially huge transfer from depositors to banks and credit unions. Banning payday loans did not save Georgian households \$154 million per year, as the [Center for Responsible Lending] projected, it *cost* them millions per year in returned check fees.¹²²

Virginia had a similar experience. When it banned payday loans, the unintended consequence was to promote the growth of the car-title lending industry.¹²³

Nor would banning auto-title loans solve the problem that arose in Virginia. Todd Zywicki describes how the same phenomenon witnessed in North Carolina, Georgia, and Virginia in the aftermath of payday-lending bans would work in jurisdictions that decide to ban auto-title loans:

Prohibiting the option of auto title loans is likely to harm the very borrowers that such regulation is intended to help. For moderate income consumers, a ban on title lending will likely lead to a shift to payday lending or greater use of revolving credit. Unbanked consumers will likely substitute pawnshops or rent-to-own to try to make ends meet. Banked consumers are likely to see little reduction in their access to credit, but instead just a substitution to greater use of a different type of credit. In fact, by pushing consumers to use credit that is less appropriate for their personal situation (such as revolving credit with substantial behavior-based fees), banked consumers are more likely to run into financial collapse than they would be with a title loan. Unbanked consumers may see a reduction in credit availability, resulting in more bounced checks, more utility shutoffs, and more evictions stemming from an inability to pay rent. It is hard to see how this

122. DONALD P. MORGAN & MICHAEL R. STRAIN, FED. RESERVE BANK OF N.Y., STAFF REPORT NO. 309, PAYDAY HOLIDAY: HOW HOUSEHOLDS FARE AFTER PAYDAY CREDIT BANS 26 (rev. 2008).

123. See Jim Hawkins, *The Federal Government in the Fringe Economy*, 15 CHAP. L. REV. 23, 75 n.297 (2011) (describing Virginia’s example and predicting similar results in Arizona following its payday lending ban).

combination of consequences—greater use of pawnshops, more bounced checks, and more utility shutoffs—can improve consumer welfare.¹²⁴

Solutions such as prohibition that simultaneously leave demand untouched and prohibit legal outlets for that demand to be satisfied simply kick the can down the road to markets even lower on the desirability scale.¹²⁵ In the same way, destroying Hamsterdam makes nice headlines and helps the public feel better about itself, but it does not improve the conditions in the inner city and in fact makes them worse.¹²⁶ Prohibition and progress are not one and the same.

Many alternatives abound. The historic response to payday lending suggests a number of creative possibilities apart from prohibition that are available to fringe economy policymakers. The first major push in the United States to attack the problem of payday lending occurred in the 1920s.¹²⁷ This reform movement, which was largely successful, had five different areas of attack: (1) expanding—not constricting—access to payday products through elimination of prohibitive usury laws, thereby bringing mainstream lenders into the market; (2) heavy regulatory oversight, including licensing in exchange for usury-rate exemptions; (3) greater transparency—judicially enforced where necessary—of true interest rates; (4) education through the media; and (5) the use of charitable nonprofits to meet market demand whenever possible.¹²⁸ These types of initiatives align with the Hamsterdam model of containment through regulation. From a policymaking perspective, the goal should be to find the regulatory sweet spot that allows for meaningful regulation while at the same time maintaining enough incentives for fringe businesses to maintain the market that consumers demand.¹²⁹ By keeping

124. Zywicki, *supra* note 76, at 447–48.

125. *See id.* at 427 (“Well-intentioned but fundamentally misguided paternalistic regulation that deprives consumers of access to title loans would likely force many borrowers to turn to even more expensive lenders, illegal lenders, or to do without emergency funds.”).

126. *Supra* notes 102–04 and accompanying text.

127. Allison S. Woolston, Note, *Neither Borrower Nor Lender Be: The Future of Payday Lending in Arizona*, 52 ARIZ. L. REV. 853, 886 (2010).

128. *Id.*

129. *See* Hawkins, *supra* note 76, at 2101–17 (laying out a number of

markets legal, problems remain aboveground, which allows for the possibility of a regulatory solution.¹³⁰

Perhaps the lasting importance of *Hamsterdam*, however, lies not in how it answers the policy question of regulation versus prohibition. Its importance, instead, may center on how it changes the terms of the debate. The criminalization model presupposes that the War on Drugs is something that can be “won.”¹³¹ *The Wire* says, “Not so.”¹³² The inevitability of markets discussed in Part II supports this viewpoint. By using the power of drama to question this prevailing premise of the criminalization model, *Hamsterdam* introduces the possibility of using new and innovative solutions to attack age-old problems.¹³³ In this regard, *Hamsterdam* may not be the right answer, but at least it initiates a dialogue as to what that answer might be. The promising opportunities offered by thinking outside the box in this manner are not limited to the drug war, but apply to many other low-value markets as well. Just because a market offers low-utility goods or services does not mean that the market should automatically be prohibited.¹³⁴ Sometimes the cure is worse than the disease.

V. *Hamsterdam and the Politics of Prohibition*

It has long been said that politics is the art of the possible.¹³⁵ *The Wire* turns this old adage on its side. In the world of *The Wire*,

promising proposals as part of an exhaustive analysis of the rent-to-own industry).

130. This possibility itself is significant. One of the chief drawbacks of any prohibition regime is that its one-size-fits-all model hampers attempts to test-run possible new solutions toward the problem being addressed. See Ilya Somin, Gonzales v. Raich: *Federalism as a Casualty of the War of Drugs*, 15 CORNELL J.L. & PUB. POL’Y 507, 540, 548 (2006) (noting the experiences of the War on Drugs and Prohibition as precluding decentralized experimentation).

131. See DUKE & GROSS, *supra* note 101, at 200 (stating that the “goal of the drug war is ‘a drug free society’”).

132. See *supra* notes 101–03 and accompanying text.

133. See David M. Alf, *Yesterday’s Tomorrow Today: Baltimore and the Promise of Reform*, in THE WIRE: URBAN DECAY AND AMERICAN TELEVISION, *supra* note 23, at 30 (“[T]he aggressively original *Hamsterdam* project constituted the most radical and successful police intervention depicted in *The Wire*.”).

134. See *supra* notes 120–30 and accompanying text.

135. See JONATHAN STEINBERG, BISMARCK: A LIFE 472 (2011) (quoting Otto

politics limits that which is possible.¹³⁶ Hamsterdam works. Indeed, it is the first thing to have worked in the drug war for a long time, and no one in the know in Baltimore disputes this remarkable success.¹³⁷ But this tragedy remains: the success of Bunny Colvin's experiment is totally and completely irrelevant. Hamsterdam fails—and is doomed to fail from its very inception—because no political leader has the courage to come to its defense, even after seeing the transformation the free zones have brought to West Baltimore.¹³⁸ Ambition, not the best interests of the community, trumps all considerations.¹³⁹ A telling scene occurs when Tommy Carcetti asks his campaign manager, Theresa D'Agostino, "Fuck the politics for a moment. What if [Colvin] happens to be right?" D'Agostino's response: "Come on, Tommy, they dealt you a winning hand and you're acting like you forgotten how to play."¹⁴⁰ She knows Tommy too well. Carcetti plays his hand, Hamsterdam is soon history, Carcetti becomes mayor and eventually governor.¹⁴¹

The unwillingness of Baltimore's leaders to embrace success embodies the institutional failure that sits at the core of *The Wire*'s being.¹⁴² In the words of David Simon:

Whatever institution you as an individual commit to will somehow find a way to betray you on *The Wire*. Unless of

Von Bismarck as stating "politics [i]s the art of the possible").

136. See Alff, *supra* note 133, at 26 (explaining that Tommy Carcetti, whose character provides the "principal political plot line," effectively "perpetuate[s] a historic status quo").

137. *Supra* notes 39, 72–73 and accompanying text.

138. See Alff, *supra* note 133, at 31–32 (describing how Carcetti succeeds in causing Hamsterdam's destruction through political rhetoric rather than substantive critiques).

139. See *id.* at 35 ("While none of Carcetti's policies reforms Baltimore permanently, each contributes to [his] statewide self-promotion and eventual election as governor.").

140. *The Wire: Mission Accomplished*, *supra* note 8.

141. *Id.* (Hamsterdam's demolition); *The Wire: Unto Others*, *supra* note 48 (Carcetti becomes mayor); *The Wire: -30-*, *supra* note 48 (Carcetti's gubernatorial election).

142. See Ted Nannicelli, *It's All Connected: Televisual Narrative Complexity*, in *THE WIRE: URBAN DECAY AND AMERICAN TELEVISION*, *supra* note 23, at 193, 202 n.3 (stating that *The Wire* gives an "unequivocal answer" to the question of whether society's largest institutions are capable of reform, "which is apparent as Colvin surveys the wreckage of his bulldozed social experiment").

course you're willing to play the game without regard to the effect on others or society as a whole, in which case you might be a judge or the state police superintendent or governor one day.¹⁴³

Colvin acts selflessly and suffers banishment.¹⁴⁴ Carcetti pursues his self-interest with reckless abandon and becomes governor.¹⁴⁵ Juxtaposing the divergent career trajectories of Colvin and Carcetti underscores the third lesson that Hamsterdam teaches: *Mustering the political will to provide legal sanction to low-value markets is a difficult, if not impossible, task.*

Politicians lack courage because they value advancement and job security over the public interest.¹⁴⁶ Taking a risky position politically—even when it is the right thing to do from a normative standpoint—invites opportunistic opponents to use this position against risk takers as a weapon in future electoral contests.¹⁴⁷ This self-preservation instinct—which Simon describes as “something hollow and ugly at our institutional core”¹⁴⁸—blocks the possibility of meaningful reform.

The failure of politics on display here is a failure to deal with reality.¹⁴⁹ From this perspective, the divide between Colvin and

143. Heather Havrilesky, *David Simon on Cutting “The Wire,”* SALON.COM (Mar. 10, 2008, 9:00AM), <http://www.salon.com/entertainment/tv/feature/2008/03/10/simon> (last visited Dec. 22, 2011) (on file with the Washington and Lee Law Review).

144. *Supra* notes 52–53 and accompanying text.

145. *Supra* notes 139–41 and accompanying text.

146. See William F. Zorzi, *The Politics of Baltimore, in THE WIRE: TRUTH BE TOLD*, *supra* note 4, at 273 (“[T]he politics practiced by Carcetti and others in the Establishment didn’t seem to lend itself to the life-and-death questions that the street world and police work often deal with. Yet it is exactly that machinery that pulls the strings.”).

147. The bipartisan unwillingness in Washington, D.C. to address entitlement reform represents a current example of this type of profile in no courage. See Philip Klein, *The Politics of Entitlement Reform*, AMERICAN SPECTATOR, Nov. 2006, at 54 (explaining why neither political party will promote entitlement reform, despite the urgent need for reform).

148. Simon, *supra* note 22, at 5; see also Alasdair McMillan, *Dramatizing Individuation: Institutions, Assemblages, and The Wire*, CINEPHILE 42–49 (Summer 2008) (arguing that *The Wire* is “one of the most profound artistic statements since Kafka of the individual condition—and the conditions of individuation—in a society dominated by dysfunctional institutions”).

149. See Alff, *supra* note 133, at 33 (arguing that the politicians on *The Wire* rely heavily on optimistic rhetoric, but “fail[] to answer the challenges of twenty-

Baltimore's political class in *The Wire* mirrors the divide between economics and politics. Economics is about making choices in a world of scarcity.¹⁵⁰ Choosing to do one thing has downstream consequences that limit choices in other areas.¹⁵¹ Politics, on the other hand, pretends that these trade-offs do not exist—that the attractive choice is easy and free of collateral costs.¹⁵² In this way, politics simplifies problems to appeal to as many voters as possible. Such simplification, while perhaps comforting to some, does not alter the fundamental reality that choices have consequences:

Politics offers attractive solutions but economics can offer only trade-offs. For example, when laws are proposed to restrict the height of apartment buildings in a community, politics presents the issue in terms of whether we prefer tall buildings or buildings of more modest height in our town. Economics asks what you are prepared to trade off in order to keep the height of buildings below some specified level. In places where land costs may equal or exceed the cost of the apartment buildings themselves, the difference between allowing ten-story buildings to be built and allowing a maximum of five stories may be that rents will be twice as high in the shorter buildings. The question then is not simply whether you prefer shorter buildings but *how much* do you prefer shorter buildings and what price are you prepared to pay to mandate height restrictions in your community. A doubling of rents and three additional highway fatalities per year? A tripling of rents and six additional highway fatalities per year? Economics cannot answer such questions. It can only make you aware of a need to ask them.¹⁵³

first century urban management”).

150. See LIONEL ROBBINS, AN ESSAY ON THE NATURE AND SIGNIFICANCE OF ECONOMIC SCIENCE 16 (2d ed. 1935) (providing the classic definition that “[e]conomics is the science which studies human behaviour as a relationship between ends and scarce means which have alternative uses”).

151. See SOWELL, *supra* note 60, at 2 (explaining that economic thinking focuses on the costs and consequences of different choices).

152. See *id.* (stating that “[p]olitical thinking tends to conceive of policies . . . in terms of their *hoped-for results*” rather than the incentives and constraints those policies create). “Many of the ‘unintended consequences’ of policies and programs would have been foreseeable from the outset if these processes had been analyzed in terms of the incentives and constraints they created.” *Id.* at 2–3.

153. *Id.* at 127.

Back to Hamsterdam. Colvin implicitly realizes that the reality of market forces—in particular, the demand for drugs and the corresponding supply that rises to meet such demand—creates the need to ask radical questions as to whether the criminalization approach to the drug war is worth the corresponding trade-offs. But he is thinking like an economist in a politician's world, and that portends his downfall.¹⁵⁴

The narrative of politics has no time to engage in a debate of such nuance as that presented by the concept of Hamsterdam. Political rhetoric is always incomplete and one-sided.¹⁵⁵ Explaining the concept of the free zones and why they might work to an average voter is a daunting task.¹⁵⁶ The converse is not true. Taking a hard line against drugs is tailor-made for a political world propelled by sound bites:

To politicians in search of sound opinions and sustained applause, the war on drugs presents itself as a gift from heaven The war against drugs provides them with something to say that offends nobody, requires them to do nothing difficult, and allows them to postpone, perhaps

154. In short, Colvin refuses to play The Game. See McMillan, *supra* note 148, at 46 (explaining that the “institutional command to ‘play the game’ is a recurrent theme in *The Wire*” and entails “docile obedience” to your leaders). Rather, Colvin “tries to effect positive change the only way he can in such a broken system, by an outright refusal to obey or enforce its dysfunctional brand of discipline.” McMillan, *supra* note 102, at 58.

155. See Alff, *supra* note 133, at 32 (arguing that Carcetti’s critique of Hamsterdam was “a nebulous rhetorical gesture to the limits of toleration,” providing no alternative policy options and ignoring practical considerations).

156. The example of former Baltimore mayor Kurt Schmoke, now Dean of Howard Law School, is instructive. As mayor, Schmoke advocated liberalizing drug laws and treating the drug problem as a public health issue. See *supra* note 106. His career suffered in the aftermath. See ALVAREZ, *supra* note 4, at 205. Schmoke actually appears in *The Wire* as a Baltimore health commissioner at the end of Season 3 in connection with the Hamsterdam story arc. *Id.* at 278. As Mayor Royce considers whether Hamsterdam has any political viability, Schmoke’s character both encourages and warns Royce: “I really think you’re on to something here, [Mayor], but if you keep it up, before you know it, they’ll be calling you the most dangerous man in America.” *The Wire: Middle Ground*, *supra* note 7. In this moment, fiction and reality merge, as Schmoke himself was branded “the most dangerous man in America” when he was mayor of Baltimore for his views on legalizing drugs. Adam Rosen, *An Interview with Kurt Schmoke*, GELFMAGAZINE.COM (Jan. 28, 2008), http://www.gelfmagazine.com/archives/an-interview_with_kurt_schmoke.php (last visited Dec. 22, 2011) (on file with the Washington and Lee Law Review).

indefinitely, the more urgent and specific questions about the state of the nation's schools, housing, employment opportunities for young black men—i.e., the conditions to which drug addiction speaks as a tragic symptom, not a cause. . . . The war on drugs thus becomes the perfect war for people who would rather not fight a war, a war in which the politicians who stand so fearlessly on the side of the good, the true, and the beautiful need do nothing else but strike noble poses as protectors of the people and defenders of the public trust.¹⁵⁷

The quest by politicians for simple and attractive answers that can be easily presented to voters also explains the obsession of Baltimore's leaders with lowering crime statistics.¹⁵⁸ The politicians see lowering the crime rate as a formula for ensuring electoral success.¹⁵⁹ That the numbers are built on a facade does not matter when maintaining power constitutes the overriding consideration.¹⁶⁰ Everything is about the votes.

157. Lewis H. Lapham, *A Political Opiate: The War on Drugs Is a Folly and a Menace*, HARPER'S MAG., Dec. 1989, at 43, 44–45. This desire to pander to public opinion is precisely what leads to Hamsterdam's death: "[Hamsterdam] has mixed consequences, but, true to form, it is ultimately the public spectacle of the drug zone, rather than any internal problems, that lead to its demise. The best efforts of a group of professionals are undone by politicians who exploit this spectacle to further their careers." Brooks, *supra* note 96, at 77 n.5.

158. See ALVAREZ, *supra* note 4, at 212 (stating that in the lead-up to Baltimore's 2002 election, police "were being pressured to reduce crime statistics by any means necessary, resulting in the wholesale manipulation of those statistics"). The manipulation of crime statistics is not a practice unique to Baltimore. See CHRISTOPHER P. WILSON, COP KNOWLEDGE: POLICE POWER AND CULTURAL NARRATIVE IN TWENTIETH-CENTURY AMERICA 146 (2000) ("Many police departments in our time, of course, have become fully cognizant that effective crime busting can actually lead to the appearance of higher crime rates, which can then be used against them by a cost-conscious public and publicity-conscious mayors.").

159. ALVAREZ, *supra* note 4, at 212.

160. *Id.* Cedric Daniels—a stalwart cop in the universe of *The Wire*—becomes police commissioner near the end of the series and refuses to play the "stats game":

I'll swallow a lie when I have to. I've swallowed a few big ones lately.
But the stats game? That lie? It's what ruined this department.
Shining up shit and calling it gold, so majors become colonels and
mayors become governors. Pretending to do police work, while one
generation fucking trains the next how not to do the job.

The Wire: -30-, *supra* note 48. The tenure of Daniels is a short one. He cannot change The Game, and he refuses to play, surprising everyone by choosing to resign instead. *Id.*

By limiting that which is possible, politics, as seen through the eyes of *The Wire*, serves as a roadblock to dealing with pressing social and economic issues such as the drug war. This limiting function has broader implications, including attempts for dealing with other disreputable markets that operate on the fringes of the economy. The analogy is not perfect. The War on Drugs invites an emotional response from the public—sometimes with racial overtones—in a way that the practices of payday lending or auto-title loans do not.¹⁶¹ Protecting children, too, often sits as the center of public debates about drugs—a fact that heightens the political risks of taking anything less than a hardline approach to the drug problem.¹⁶² These distinctions between the drug war and the fringe economy make ideas such as Hamsterdam a much tougher sell to the voting public than any similar proposals addressed toward the woes of the fringe economy.¹⁶³ In fact, that the businesses in the fringe economy legally exist at all demonstrates a fundamental difference in public attitudes toward drug markets vis-à-vis fringe markets.¹⁶⁴ In many ways, therefore, Hamsterdam as a policy approach—legalization with significant government oversight—already exists in the world of the fringe economy.¹⁶⁵ The end result is that policymakers have greater room to maneuver politically in dealing with the likes of payday lenders than they do with drug dealers.

161. See ANDERSON, *supra* note 61, at 120 (discussing how unemployment, racial prejudices, dislocation, and destitution cause many inner-city African Americans to join the drug trade); Mamber, *supra* note 16, at 629 (stating that the drug war created “an overcrowded prison system filled disproportionately with people of color”).

162. See Bennett, *supra* note 101 (placing children front-and-center of the dialogue on drug prohibition). Bennett’s point may be fundamentally sound; it is certainly politically savvy. By framing the drug war as a means to protect children, Bennett immediately puts his pro-legalization foes on the defensive, forcing them to debate their position on his terms, namely the effect of legalization on “the children.” Because the political benefit of advocating decriminalization is practically nil, the self-serving politician will naturally think, “Why bother?”

163. See KARGER, *supra* note 13, at 36–37 (explaining how the fringe economy has gained cultural acceptance as both poor and middle-class families use fringe products).

164. *Id.*

165. See *supra* note 117 and accompanying text.

These caveats, however, do not mean that the third lesson of Hamsterdam lacks relevance in the discussion of low-value, but otherwise legal, markets. Businesses that operate on the fringe remain unsympathetic and easy to demonize as they are perceived as deceptive, cost prohibitive, abusive, and predatory.¹⁶⁶ The lack of popularity of these industries with the general public extends to regulators and other policymakers who have used—for reasons that are unclear—the present economic distress to take a closer look at fringe lenders.¹⁶⁷ Courts, scholars, and journalists likewise take a dim view of fringe-economy operators.¹⁶⁸ From a risk–reward calculus then, there exists little political upside for elected officials to advocate liberalizing policies toward fringe economic players, even if such policies promote the public good.¹⁶⁹ Industries such as payday lenders, anticipatory lenders, car-title lenders, pawnshops, and rent-to-own stores simply have no enduring constituency.¹⁷⁰

The combination of an unpopular industry and prohibition as a common policy tool of choice creates a scenario where politicians will opt for the easy answer of either banning fringe economic products or enacting overly burdensome regulations, which amounts to the same thing.¹⁷¹ Prohibition and consumer protection, however, are not synonymous.¹⁷² But the merits do not

166. See Hawkins, *supra* note 123, at 61 (stating that political rhetoric used to justify regulations often suggests that creditors confuse and deceive customers, employing “tricks and traps”).

167. See Zywicki, *supra* note 76, at 425 (noting that “the onset of the financial crisis has spurred renewed scrutiny of nontraditional lending products, even though there is no suggestion—much less evidence—that those products contributed to the crisis, and indeed, may be playing a positive role in mitigating the fallout from the crisis”).

168. Hawkins, *supra* note 76, at 2044 (analyzing the rent-to-own industry and concluding that academics, courts, and journalists justify regulation based simply on the high price of rent-to-own transactions).

169. See KARGER, *supra* note 13, at 200–02 (discussing the lack of incentives for politicians and government officials to implement effective reforms).

170. See *id.* at 209–11 (detailing the attacks these fringe industries currently face and comparing them to the large financial institutions entering the fringe sector with established political clout).

171. See *supra* notes 167–69 and accompanying text.

172. See KARGER, *supra* note 13, at 198–99 (explaining that prohibiting fringe economy products fails to protect consumers and arguing that effective consumer protection should include regulatory reforms).

matter. The third lesson of Hamsterdam instructs us that political outcomes, not policy outcomes, drive decisions relating to perceived low-value markets. It takes a special brand of political courage for a public official to say: “Payday loans, car-title loans, and rent-to-own furniture can serve useful functions.” Such a message seems completely counterintuitive to our normal course of thinking where the dominant media narrative “decree[s] fringe creditors as unscrupulous, rapacious, notorious, unconscionable, like crack, and the worst actors.”¹⁷³ The prospect of swimming against this tide, which offers no political advantage and significant political risk, will dissuade politicians from undertaking the hard work of crafting nuanced regulatory solutions to the problems of fringe markets.¹⁷⁴

The three lessons of Hamsterdam thus converge to paint a dark picture for the future of regulation in the fringe economy. While prohibition is usually the least effective solution, it remains the easiest to implement—a blunt instrument that is politically, rhetorically, and emotionally easy to sell.¹⁷⁵ In a world where the persistence of demand creates available markets, consumers respond to prohibition by moving underground to obtain that which the law forbids them to acquire aboveground, almost always with worse results.¹⁷⁶ Consequently, while politicians who demonize fringe lenders and limit their ability to operate can point to these efforts as signs of their caring and compassion, the lives of their constituents—much like the lives of the citizens left behind in West Baltimore in Hamsterdam’s wake—continue to suffer long after the cheap political points have been scored.¹⁷⁷ This perpetual elevation of spin over substance leaves communities impoverished, with no hope of change.

The drama of Hamsterdam uses the issue of the drug war to capture this angst, but the story is just a vehicle to make a larger

173. See Hawkins, *supra* note 123, at 76 (citing examples of rhetoric using these words to describe fringe lenders).

174. See *id.* at 24–25 (arguing, based on empirical research, that political motivations for increasing federal regulations “fail[ed] to comprehend fringe banking transactions and their effects”).

175. See *supra* notes 156–60 and accompanying text.

176. See *supra* notes 74–77, 120–21 and accompanying text.

177. See *supra* notes 122–24 and accompanying text.

point. Ultimately, the moral of *Hamsterdam* is not about legalizing drugs; it is about the structural inability of government to respond to pressing social challenges:

Even if *The Wire* focuses on particular failing institutions, it implicitly makes a deeper point about institutions as such. As a society, our response to most problems that require collective action is to set up institutions that provide constraints and incentives to help align self-interest with the goal in question. Unfortunately, complex problems, such as education or crime, cannot be perfectly captured by institutional design. The gap between the incentives and constraints established by any institution and the goals it is meant to serve leaves a space for self-interest to subvert the original purpose of the institution. *The Wire* illustrates this tendency by showing its extreme manifestations in the war on drugs, in the public school system, and in democratic politics. . . . *The Wire* shows that . . . today's problems are simply the eventual outcome of our public institutions' internal logic. By setting up internal institutional games, one ensures that they will tend to corrupt themselves, subverting their original goals by their very operation.¹⁷⁸

Institutional failure of this type on a mass scale paralyzes the prospect of progress and renders the engine of democracy a tool of self-interest at the expense of the collective good.¹⁷⁹

And that is a lesson that has far-reaching consequences, for the fringe economy and beyond.

178. Mark, *supra* note 26.

179. *Id.*; Nannicelli, *supra* note 142.