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AI Risk Assessment Tools Amid the War on Drugs: Productive or Counterproductive?

Matin Pedram

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AI RISK ASSESSMENT TOOLS AMID THE WAR ON DRUGS:
PRODUCTIVE OR COUNTERPRODUCTIVE?

*Matin Pedram**

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I. INTRODUCTION

When former U.S. President Richard Nixon addressed drug abuse as America's Public Enemy No.1 on June 17, 1971,¹ a new drug policy began in the United States² in which law enforcement has played a significant role to control drug offences. Under this policy, whether drug offenders committed a violent act or not, they had to be penalized.³ The aim was to keep them away from society along with reducing the consumption of drugs.⁴ A decade later, Iran commenced pursuing an ambitious goal. Since 1981, Iran's government has undertaken a war on drugs to supplant narcotic-related activities. Thus, smugglers and drug dealers have confronted the most severe penalties, including execution and lengthy

¹ Ed Vulliamy, *Nixon's 'War on Drugs' Began 40 Years Ago, and the Battle Is Still Raging*, THE GUARDIAN (July 23, 2011, 7:07 PM), <https://www.theguardian.com/society/2011/jul/24/war-on-drugs-40-years>.

² Benjamin Smith, *New Documents Reveal the Bloody Origins of America's Long War on Drugs*, TIME (Aug. 24, 2021, 12:49 PM), <https://time.com/6090016/us-war-on-drugs-origins/>.

³ For instance, in Ireland, Section 3 of the *Misuse of Drugs Act 1977* says that "a person who has a controlled drug in his possession in contravention of subsection (1) of this section shall be guilty of an offence." See *Misuse of Drugs Act 1977* (Act No.12/1977), <https://www.irishstatutebook.ie/eli/1977/act/12/section/3/enacted/en/html#sec3>. Or in the State of Queensland, Australia, Section 9 of *Drug Misuse Act 1986* maintains that "A person who unlawfully has possession of a dangerous drug is guilty of a crime." (<https://www.legislation.qld.gov.au/view/html/inforce/current/act-1986-036#sec.9>). Schedule 4 of *Drugs Misuse Regulation 1987* determines a threshold for dangerous drugs. For instance, if one possesses amphetamine and the quantity exceeds 200 grams, she may be sentenced to 25 years imprisonment. (<https://www.legislation.qld.gov.au/view/html/inforce/current/sl-1987-dmr#sch.4>). By contrast, some other countries have widely considered decriminalization of drug use. See Niamh Eastwood, Edward Fox & Ari Rosmarin, *A Quiet Revolution: Drug Decriminalisation Across the Globe*, RELEASE REPORT 1 (2nd ed. 2016).

⁴ Katherine Neill, *The War on Drugs in the American States: Variations in Sentencing Policies Over Time* (Aug. 2014) (Ph.D. dissertation, Old Dominion Univ.).

imprisonment. During this war, the government amended the laws four times to adapt them to new challenges and correct previous flaws. Notwithstanding this, *Iran General Policies on Anti-Drug Abuse (2006)* bound “the government to fight comprehensively and crucially against all illegal activities such as production, importation, exportation, possession, and sale associated with drugs.”⁵

The United States’ and Iran’s toughness against drug offenders has coincided with the increasing number of prisoners in both countries.⁶ One can hardly deny that the war on drugs is one of the factors in prison populations. A report highlights that “significant numbers are incarcerated for possession/use alone; far more are imprisoned for drug offending, overloading the criminal justice systems of countries all over the globe.”⁷ While some researchers recommend that it is time to decriminalize drug (ab)use and respect individuals’ freedom to choose whatever they want,⁸

⁵ GENERAL ANTI-NARCOTICS POLICIES 1385 [2006] (Iran), <https://khl.ink/f/32758>.

⁶ *But see* John F. Pfaff, *Locked In* 26-50 (Basic Books, 2017) (it is contended that the war on drugs is not the primary reason for mass incarceration in the United States).

⁷ *Count the Costs, The War on Drugs: Creating Crime, Enriching Criminals*, TRANSFORM DRUG POLICY FOUNDATION (Dec. 16, 2011), <https://idpc.net/publications/2011/12/creating-crime-enriching-criminals>. Also, the paper emphasizes that “these are mainly low-level players in the illicit trade, and low-income dependent users offending to support their use as described above. There has also been a growing use of arbitrary detention masquerading as ‘drug treatment’ in centres that are often no more than prisons, as well as the use of lengthy pre-trial detention for drug offenders.”

⁸ *See* Mark Thornton, *Prohibition versus Legalization; Do Economists Reach a Conclusion on Drug Policy?*, 11 THE INDEPENDENT REVIEW 417 (2007). Further, Ayn Rand in an interview maintains, “I do not approve of any government controls over consumption, so all restrictions on drugs should be removed (except, of course, on the sale to minors). The government has no right to tell an adult what to do with his own health and life. That places a much greater moral responsibility on the individual; but adults should be free to kill themselves in any way they want.” *See* Robert Mayhew, *Ayn Rand Answers: The Best of Her Q&A*, 14 (New American Library, 2005).

governments endeavor to correct their war plans and enforce new methods.⁹ For instance, Iran’s government has repeatedly amended the current *Anti-Drug Abuse Code* to fight seriously and assertively against smugglers and drug users.¹⁰ Governments have never presumed that the war would be endless, costing people millions of dollars.

There are multiple constraints for drug offenders not to be released early or benefit from parole. These constraints are rooted in the risk of recidivism and the requirements of a disciplinary approach to disincline people. Nevertheless, the social and economic consequences of mass incarceration undermine the pure retributive position and require changes in the criminal justice system.

At the core of this article are predictive tools that anticipate detainees’ risk of recidivism rather than surveillance tools that help monitor individuals.¹¹ The United States is taking AI risk assessment tools into account to rehabilitate incarcerated offenders by better assessing their risk for recidivism.¹² AI facilitates the processing of collected data and provides one with a clear relevance

⁹ Private prisons in the United States might be one of the instruments to solve the problem of mass incarceration, but it is clarified that this solution is part of a bigger problem called tough-on-crime. “This policy reversal was followed by a directive to prosecutors to pursue the most serious charges and toughest sentences in all federal cases. These changes are projected to increase prison admissions and sentence length, which is likely to contribute to an expansion of private facility contracting.” See Kara Gotsch & Vinay Basti, *Capitalizing on Mass Incarceration: U.S. Growth in Private Prisons*, THE SENTENCING PROJECT (Aug. 2, 2018), <https://www.sentencingproject.org/publications/capitalizing-on-mass-incarceration-u-s-growth-in-private-prisons/>.

¹⁰ Najmeh Mahmoudinia, *The Other Side of Laws for Combatting Drug Abuse*, IRANIAN STUDENTS NEWS AGENCY (July 4, 2021, 3:03 AM), <https://www.isna.ir/news/1400041208143/>.

¹¹ Vincent M. Southerland, *The Intersection of Race and Algorithmic Tools in the Criminal Legal System*, 80 MD. L. REV. 487, 497 (2021).

¹² Nathan James, Cong. Rsch. Serv., R44087, *Risk and Needs Assessment in the Federal Prison System* (2018).

of various factors along with some predictions.¹³ Although using AI risk assessment tools is at the preliminary stage in the United States, as proponents of such tools assert,¹⁴ it can play an efficient role in preserving criminal justice.

I begin this article with the old story of drug prohibition and the endless war on drugs. Governments such as Iran and the United States have deployed harsh sanctions against drug dealers and even those who carry or retain prohibited drugs. Although these countries' legal systems and governance are different *in toto*, Iran and the United States are chosen because the former is one of the critical transit routes of drugs to other areas like the European countries,¹⁵ and the latter is the central market for producers in Latin America.¹⁶ In part II, this article focuses on the cost and effect of

¹³ Katherine B. Forrest, *When Machines Can Be Judge, Jury, and Executioner: Justice in the Age of Artificial Intelligence*, 21 (World Scientific Publishing Co, 2021).

¹⁴ See G.V. Travaini et al., *Machine Learning and Criminal Justice: A Systematic Review of Advanced Methodology for Recidivism Risk Prediction*, 19 INT. J. ENVIRON. RES. PUBLIC HEALTH. 1, 11 (2022). (Revealing that predictive methods, particularly AIs, in addressing the risk of recidivism could be efficient if transparency, impartiality, and fairness were preserved.) Richard A. Berk, *Artificial Intelligence, Predictive Policing, and Risk Assessment for Law Enforcement*, 4 ANN. REV. CRIMINOLOGY 209, 232-3 (2021). (Highlighting the importance of a comparison between the benefits and flaws of risk assessment tools and the role of these tools in criminal justice.)

¹⁵ “Drug trafficking represents a major challenge for the Islamic Republic of Iran. The geographical location of the country, particularly its porous 1,923 km-long Eastern border with Afghanistan - the world's largest illicit opium producer - and Pakistan, has turned it into a major transit country for illicit drugs.” U.N. OFF. ON DRUGS & CRIME, *Drug Trafficking and Border Control Situation Analysis*, <https://www.unodc.org/islamicrepublicofiran/drug-trafficking-and-border-control.html> (last visited Apr. 28, 2022). Based on UNODC's 2021 report, opium is largely produced in Afghanistan. U.N. OFF. ON DRUGS & CRIME, *World Drug Report 2021*, 51 (E.21.XI.8, 2021).

¹⁶ “[C]ocaine is typically transported from Colombia to Mexico or Central America by sea and then onwards by land to the United States and Canada. The US authorities estimate that close to 90% of the cocaine entering the country crosses the US/Mexico land border, most of it entering the state of Texas. According to US estimates, some 70% of the cocaine leaves Colombia

the drug war to contextualize where we stand. There are various types of punishments for drug offenders in Iran and the United States. Therefore, to avoid any ambiguity, this article hypothesizes a detainee who possesses 100 grams of methamphetamine for the first time and fails to distribute or sell it.

After elaborating on the war's deficiencies by considering its cost and the minor tangible outcomes, Part III reaffirms that the war on drugs requires a radical change, particularly in Iran, which suffers from economic stagnation. It is presumed that decriminalization is not applicable in the current legal system of Iran, while it is plausible to lighten nonviolent drug offenders' convictions by using AI risk assessment tools. The nonaggression principle protects nonviolent drug offenders from prolonged imprisonment and other deprivations resulting from the retributive approach. It appears that AI risk assessment tools could play a crucial role in reducing the number of incarcerated persons and provide nonviolent drug offenders with an opportunity for early release from prisons. Nevertheless, it is argued that policymakers in Iran and the United States ought to concede, at the very least, that the current war on drugs should not have targeted nonviolent offenders as well.

II. WAR ON DRUGS: FEARS AND DESIRES

The War on Drugs consists of “attempts to eradicate crops, intercept drugs at the nation's borders, and arrest, prosecute, and punish commercial participants at every level of the production and distribution system.”¹⁷ The war has contributed to the increase in

via the Pacific.” U.N. OFF. ON DRUGS & CRIME, *Mexico, Central America and the Caribbean*, <https://www.unodc.org/unodc/en/drug-trafficking/mexico-central-america-and-the-caribbean.html> (last visited Apr. 28, 2022).

¹⁷ A. Morgan Cloud III, *Cocaine, Demand, and Addiction: A Study of the Possible Convergence of Rational Theory and National Policy*, 42 VAND. L. REV. 725, 726 (1989). For instance, on the 11th of March 1984, Iran's parliament discussed the restriction of smuggling and the reduction of drug use by means of strengthening eastern borders and empowering border patrol. *See*

the prison population in Iran. In the United States, prison also plays a central role in the tough-on-crime approach.¹⁸ However, it is worth weighing the war's cost against its goal.

A. *Cost-Effectiveness Approach to the War*

In the cost-effectiveness approach, the first step is to evaluate the cost of the war between Iran and the United States. "It is estimated that 11% of Iran's GDP is spent directly and indirectly on the fight against drugs."¹⁹ For a country that suffers from economic recession, this may be a tremendous amount of money. The United States is in the same position. Based on some reports, the country has spent over a trillion dollars enforcing its drug policy since 1971,²⁰ while former U.S. President Richard Nixon declared War on Drugs by requesting "\$370M for the campaign of rehabilitation, research, education, enforcement, and international control of drug traffic."²¹ On a global scale, the expenditure is in the neighborhood of \$100 billion.²² This is the picture of the drug war both in a less developed community and an industrial one, prompting us to think about alternative approaches.

Akbar Hashemi Rafsanjani, *Parliament Negotiations under the Presidency of Ayatollah Hashemi Rafsanjani (Session 596)*, (Mar. 1, 1984), <https://tinyurl.com/mr2n2fmm>.

¹⁸ Etienne Benson, *Rehabilitate or Punish?*, 34 AM. PSYCH. ASS'N 46, 46 (2003).

¹⁹ Mohammad Ali Haqshenas, *Iran's Spending 11% of its GDP on Fighting Drugs*, MEHR NEWS AGENCY (Jan. 1, 2020, 2:50 PM) <https://en.mehrnews.com/news/153980/Iran-s-spending-11-of-its-gdp-on-fighting-drugs>. In 2020, Iran's GDP was \$203,471,303.95. See THE WORLD BANK, <https://data.worldbank.org/indicator/NY.GDP.MKTP.CD?locations=IR> (last visited Jan. 18, 2022).

²⁰ Nathaniel Lee, *America has spent over a trillion dollars fighting the war on drugs. 50 years later, drug use in the U.S. is climbing again.*, CNBC (June 17, 2021, 1:15 PM) <https://www.cnbc.com/2021/06/17/the-us-has-spent-over-a-trillion-dollars-fighting-war-on-drugs.html>.

²¹ Dana Adams Schmidt, *President Orders Wider Drug Fight; Asks \$155-Million*, N.Y. TIMES, June 18, 1971, at 1.

²² See Pfaff, *supra* note 7.

The War on Drugs is a definite cause of price increases in the drug's market. There is a close resemblance between taxation and drug prohibition in economic terms. By prohibiting certain drug-related activities, drug dealers in the market confront multiple risks. These include the inability to enforce their contracts through the judicial system, probable duration of incarceration, monetary fines, and other harsher punishments that render drug prices higher and evacuate the market of higher-cost sellers.²³ As Rothbard stipulates:

In many instances of product prohibition, of course, inevitable pressure develops for the reestablishment of the market illegally, i.e., as a black market. As in the case of price control, a black market creates difficulties because of its illegality. The supply of the product will be scarcer, and the price of the product will be higher to compensate the producers for the risk of violating the law; and the more strict the prohibition and penalties, the scarcer the product and the higher the price will be.²⁴

Further, the impact of drug prohibition on the number of used drugs is another parameter to show how effective the war would be. Cloud and Elkins rely on the economic theory of elasticity to prove that law enforcement and toughness on drug (ab)use are unlikely to be effective. In this sense, it is required to distinguish between addicted and non-addicted users. Drug demand is inelastic in the drug market, meaning that after a price increase drug users are still interested in consuming the same amount of drugs as before the increase. This implies that addicted users ignore any changes in the price. One of the side effects of government interference is the

²³ Christopher J. Coyne & Abigail R. Hall, *Four Decades and Counting*, No. 811 CATO INST. POL'Y ANALYSIS, 4 (2017).

²⁴ Murray N. Rothbard, *Power and Market: Government and the Economy* 41 (Mises Institute, 4th ed. 2006).

increased risk of supplying drugs on the black market, resulting in prices rising.²⁵ “Addicts will continue to consume the drug despite marginal increases in unit costs. As a result, increases in unit price will have less effect upon the demand generated by addicts than by nonaddicts.”²⁶

Disappointment from the drug war would be doubled when it is clarified that there is a positive correlation between the level of drug use and harsher policies. Accordingly, countries with the toughest laws, like Iran and the United States, are exposed to the highest rates of drug use.²⁷ Sadeghi asserts that a suppressive plan to eliminate the drug market in Iran is unlikely to be successful because harsh policies result in no tangible impact on drug users’ behaviors.²⁸ Besides, the stricter the prohibitionist policy, the harder the drugs that appeared on the market in Iran. When the government outlawed opium, in 1955, users tended to use harder drugs like heroin and, in 1957, the first reported case of heroin addiction was detected in Iran.²⁹

Regardless of price increases, the socioeconomic impacts of excessive criminalization on incarcerated people should not be ruled out. Bradley explains that “there are significant economic and political hardships that accompany felons and parolees.”³⁰ Moreover, such impacts are not restricted to the prisoners but also their families. In the United States, a study shows that “drug and

²⁵ See David Elkins, *Drug Legalization: Cost Effective and Morally Permissible*, 32 B.C. L. REV. 575, 578 (1991).

²⁶ Cloud III, *supra* note 18, at 761-3.

²⁷ Eastwood, *supra* note 4, at 38.

²⁸ Azadeh Sadeghi, *Impact Evaluation of Police Control Policies on Drug Markets*, 49 J. OF Q. CRIM. L. AND CRIMINOLOGY STUDY 133, 156 (2019).

²⁹ Maziyar Ghiabi, *Drugs Politics: Managing Disorder in the Islamic Republic of Iran*, 58 (Cambridge Univ. Press, 2019).

³⁰ In particular, “the inability to provide for themselves financially leading to depression and recidivism. The economic consequences of a criminal record are debilitating, incentivizing many to return to a life of crime.” See Anthony B. Bradley, *The Social, Moral, and Economic Costs of Overcriminalization*, in *Ending Overcriminalization and Mass Incarceration: Hope from Civil Society*, 143 (Cambridge Univ. Press, 2018).

public-order offenders in state and federal prisons were more likely to have children than violent offenders.”³¹

The continuity of the drug war is questionable due to cost-effectiveness analysis. These expenditures inform one about the lost opportunity that could be used to make criminal justice fairer and more effective. A study in Iran reveals that a “higher rate of drug use is among low-socioeconomic people.”³² Due to the inelasticity of drug demands for addicted users, a price increase would incentivize them to commit violent acts such as theft or increase future dangerousness. Instead, “research finds that investments in policies that improve labor market opportunity and educational attainment are more cost-effective than additional incarceration and can reduce the collateral consequences of convictions.”³³

The drug war should not be encapsulated in pure economic loss. Incarcerating nonviolent drug offenders whose wrong acts are the simple possession of illicit drugs can ruin their career path, expose them to severer punishments for further crimes, and so forth.³⁴ In this sense, AI risk assessment tools can target violent drug offenders or high-risk inmates rather than nonviolent drug users or offenders to restrain the costs above.

³¹ Lauren E. Glaze & Laura M. Maruschak, *Parents in Prison and Their Minor Children*, BUREAU OF JUST. STAT. SPECIAL REP., U.S. DEP’T OF JUST., NCJ 222984 4 (2008).

³² Mehdi Moradinazar et al., Prevalence of Drug Use, Alcohol Consumption, Cigarette Smoking and Measure of Socioeconomic-Related Inequalities of Drug Use Among Iranian People: Findings from a National Survey, 15:39 *SUBSTANCE ABUSE TREATMENT, PREVENTION, AND POLICY* 1, 2 (2020).

³³ EXEC. OFF. OF THE PRESIDENT COUNCIL OF ECON. ADVISORS, *Economic Perspectives on Incarceration and the Criminal Justice System*, (Apr. 2016) at 66.

³⁴ Wendy Sawyer & Peter Wagner, *Mass Incarceration: The Whole Pie 2020*, PRISON POL’Y INITIATIVE (Mar. 24, 2020) <https://www.prisonpolicy.org/reports/pie2020.html>.

B. *More Than a Sole Incarceration*

Even though during the Progressive Era, the U.S. government conducted rehabilitative processes, after the 1970s rehabilitation was publicly attenuated.³⁵ Its policies shifted away from rehabilitation and returned to its less ambitious goal of retribution.³⁶ In the 1980s and 1990s, the United States Congress and various state legislatures either enforced or ratified multiple tough-on-crime laws to restrict judges' discretion and impose minimum sentences on those who committed certain crimes.³⁷ In this case, "the War on Drugs and harsher sentencing policies, including mandatory minimum sentences, fueled a rapid expansion in the nation's prison population beginning in the 1980s."³⁸ That is why the current government's plans address nonviolent drug offenders to reduce the prison population.³⁹

³⁵ Michelle S. Phelps, *Rehabilitation in the Punitive Era: The Gap Between Rhetoric and Reality in U.S. Prison Programs*, 45 L. & SOC'Y REV. 33, 36 (2011). Further, Maruna and Ward affirm that "[t]he War on Crime, the War on Drugs, 'Prison Works' and the unbelievable escalation of prisoner numbers in the US and elsewhere were the product of discernible structural and cultural shifts in the social landscape." See Tony Ward & Shadd Maruna, *Rehabilitation* 9 (Routledge, 1st. ed. 2007).

³⁶ Joycelyn Pollock, *The Rationale for Imprisonment*, in *Prisons Today and Tomorrow* 11-2 (Jones & Bartlett Learning, 3d ed. 2014).

³⁷ Michael Donohue, *A Replacement for Justitia's Scales?: Machine Learning's Role in Sentencing*, 32 HARV. J.L. & TECH. 657, 669 (2019).

³⁸ Gotsch & Basti, *supra* note 10.

³⁹ In 2015, the former U.S. President Barack Obama highlighted that "[T]he studies show that up to a certain point, tougher prosecutors and stiffer sentences for these violent offenders contributed to the decline in violent crime over the last few decades. . . . But here's the thing: Over the last few decades, we've also locked up more and more nonviolent drug offenders than ever before, for longer than ever before. And that is the real reason our prison population is so high. In far too many cases, the punishment simply does not fit the crime." *Remarks by the President at the NAACP Conference*, EXEC. OFF. OF THE PRESIDENT, OFF. OF THE PRESS SEC. (July 14, 2015) <https://obamawhitehouse.archives.gov/the-press-office/2015/07/14/remarks-president-naacp-conference>.

O'Brien maintains that confinement includes exposure to drugs and substance abuse, and often begins well before entering the criminal justice system.⁴⁰ In that case, mass incarceration will double these adverse side effects. Incarceration has a solid tie to retributive and deterrent-based approaches. Similarly, this approach was warranted by enacting the *Anti-Drug Abuse Code* in Iran.⁴¹ For example, in 2018, the population of prisoners in Iran was approximately 240,000, while before 1981, the population of prisoners hardly amounted to 10,000.⁴² Meanwhile, in the United States, 450,000 were incarcerated for nonviolent drug offences in 2020.⁴³

Unfortunately, mass incarceration poses adverse problems that cost society millions of dollars.⁴⁴ Fostering gang relationships in prisons is one of the implications because “with the massive growth of the prison population in America from the middle of the 20th century, inmates could no longer rely on the code to keep them safe.”⁴⁵

Using private prisons is another implication of mass incarceration, which differs from private actors in a genuinely free market. If so-called private prisons are funded by taxes, then no

⁴⁰ Tim O'Brien, *Compounding Injustice: The Cascading Effect of Algorithmic Bias in Risk Assessments*, 13 *GEO. J.L. & MOD. CRITICAL RACE PERSP.* 39, 67 (2021).

⁴¹ The harshest punishments including long-term imprisonment, life imprisonment, property confiscation, and execution have been considered by the Iranian Criminal System for drug abuse. See Mohammad Haddadzadeh et al., *Challenges to the Effectiveness of the Execution Penalty for Drug Offenses in the Light of the Theories of the Economic Analysis of Crime*, 8 *J. Crim. L. Rsch.* 9, 10-1 (2020).

⁴² WORLD PRISON BRIEF, <https://www.prisonstudies.org/country/iran> (last visited Jan. 16, 2022).

⁴³ Sawyer & Wagner, *supra* note 35.

⁴⁴ For a detailed discussion about the consequences of mass incarceration, see Avlana K. Eisenberg, *Incarceration Incentives in the Decarceration Era*, 69 *VAND. L. REV.* 71, 80-6 (2016).

⁴⁵ J.D., *Why Prisoners Join Gangs*, *THE ECONOMIST* (Nov. 12, 2014), <https://www.economist.com/the-economist-explains/2014/11/12/why-prisoners-join-gangs>.

inclination would remain to reduce the number of incarcerated persons.⁴⁶ Indeed, mass incarceration and private prison expansion are interdependent to the extent that private prison revenues are susceptible to changes in demands or decriminalization of certain activities. CoreCivic⁴⁷ pinpoints:

The demand for our facilities and services could be adversely affected by the relaxation of enforcement efforts, the expansion of alternatives to incarceration and detention, leniency in conviction or parole standards and sentencing practices through the decriminalisation of certain activities that are currently proscribed by criminal laws.⁴⁸

Consequently, the argument is that the root causes of mass incarceration are criminalization policy and tougher attitudes toward either violent or nonviolent offenders. Pfaff observes that releasing nonviolent offenders to reduce the prison population is not a favorable policy, and the more extensive option would be a radical reform in ways of punishing violent offenders. Despite this, Pfaff implies that finding a way to release nonviolent drug offenders would be a successful project that encourages people and policymakers to take a step toward a radical reformation.⁴⁹ Hence, decriminalization can ease the problem. Nevertheless, before this phase, one can put forward a more pragmatic position on the drug

⁴⁶ Lee Friday, *A More Sane Alternative to Government Prisons*, MISES INST. WIRE (Sept. 6, 2019). Further, Calton emphasizes that, “At the outset, it is always worth clarifying that private prisons are ‘private’ in only the loosest sense of the word. It is true that the profits from these facilities are privatized, but as with any crony enterprise, the costs are socialized. State governments use taxpayer dollars to fund the contracts, and they stipulate the terms of operation.” See Chris Calton, *The Problem with Private Prisons Is Not that They Are Private*, MISES INSTITUTE WIRE (Aug. 15, 2019).

⁴⁷ Formerly known as “Corrections Corporation of America.”

⁴⁸ CoreCivic, Inc., 2020 Annual Report (Form 10-K) (Mar. 17, 2021).

⁴⁹ Pfaff, *supra* note 7, at 205.

war. Mass incarceration can be a springboard for risk assessment tools to reduce and rescue nonviolent drug offenders.⁵⁰

III. INEVITABILITY OF RADICAL CHANGE IN THE DRUG WAR

Over seven decades of drug prohibition in Iran and 100 years of illicit substances prohibition in the United States, data shows a notorious failure that any economic analysis could hardly ignore. However, such economic analysis would fail to anticipate increased disease, death, violence, and antisocial behaviors.⁵¹ Apart from this, prohibitionism is inherently at odds with the nonaggression principle and individualism, undermining its rationale.

A. *Nonaggression Principle and Drug War Reasonableness*

Under the nonaggression principle, the authority of government to bar some activities that are neither a purposeful act nor a causal one to harm others can be seen as interference in individual choices. In this sense, governments aim to control personal conduct, and this control includes drug use.⁵²

1. Crime: A Government-Made Notion

Finnis believes that justice of retribution and the maintenance of private rights call for a particular institution: the

⁵⁰ Chelioudakis contends that mass incarceration might be one of the elements that forces the United States to consider AI risk assessment tools. However, it cannot be interpreted that any society should use predictive tools and policymakers should be cautious in applying such tools due to different criminal issues in societies. See Eleftherios Chelioudakis, *Risk Assessment Tools in Criminal Justice: Is There a Need for Such Tools in Europe and Would Their Use Comply with European Data Protection Law?*, 1 ANU J. OF LAW AND TECHNOLOGY 72, 85 (2020).

⁵¹ Coyne & Hall, *supra* note 24, at 20.

⁵² Gary Chartier, *Anarchy and Legal Order: Law and Politics for a Stateless Society*, 216 (Cambridge Univ. Press, 2013).

state.⁵³ With this in mind, the government (state) is entitled to define wrong acts and impose punishments. This arbitrariness can be traceable in prohibitionism. For example, before 1955 the production of opium and cultivation of poppy plants, due to their financial benefits to Iran's government, were not only promoted but the government also sought to centralize opium cultivation through *Opium Monopoly Act* (1928).⁵⁴ However, Finnis stresses that, "Retributive punishment, the only genuine and justified form of punishment (whatever other purposes may rightly be pursued on occasion and, in a sense, employing it), is thus remote indeed from revenge."⁵⁵

By contrast, the nonaggression principle challenges this arbitrariness of governments. Following this principle, any voluntary act that harms another person or damages her interests, without her consent, not to preclude an actual or threatened unjust injury, will hold her responsible for compensating for her actions.⁵⁶

⁵³ John Finnis, *Aquinas: Moral, Political, and Legal Theory*, 215 (Oxford Univ. Press, 1998).

⁵⁴ Ram Baruch Regavim, *The Most Sovereign of Masters: The History of Opium in Modern Iran, 1850-1955*, 179 (2012) (Ph.D. dissertation, Univ. of Penn.). The government aimed to increase its remuneration to finance industrialization and control drug use to ensure that consumption did not interfere with industrial plans. See Gerald T. McLaughlin & Thomas M. Quinn, *Drug Control in Iran: A Legal and Historical Analysis*, 59 IOWA L. REV. 469, 487-8 (1974). By the end of World War II, under the United States' pressure, Iran's government gradually enforced a prohibitionist policy. However, the approach was neither comprehensive, nor the government preferred to act assertively. See Ghiabi, *supra* note 30, at 49. By 1946, responding to the pressures exerted upon Iran, the government of Iran announced that opium will be completely prohibited in Iran, but once again even this announcement did not materialize into actual prohibition. In fact, this pattern repeated itself several times in the next decade, and even in 1953 the government of Prime Minister Mosaddegh announced the prohibition of opium cultivation and production, only to have these announcements fade into oblivion. See Regavim, *supra* note 55, at 195.

⁵⁵ John Finnis, *Retribution: Punishment's Formative Aim*, 44 AM. J. JURIS. 91, 102 (1999).

⁵⁶ Chartier, *supra* note 53, 44-5.

The current criminal law contradicts this description. Conversely, it is an instrument to prohibit whatever policymakers intend and impose various penalties, even life imprisonment or execution, without considering individuals' rights or desires. The government indoctrinates that "a crime is an offence against the state, rather than against any particular sentient."⁵⁷ That is why former U.S. President Donald Trump repeatedly claimed the death penalty for drug traffickers.⁵⁸ Analogously, drug use and simple possession of illicit drugs are subject to constraints or various penalties, which is in stark contrast with the nonaggression principle.

2. Weak Rationale for War Continuity

Regardless of the nonaggression principle and the government's efforts to continue the war, any change in the drug prohibition policy requires a shift in people's attitudes to addiction as a crime or a personal choice. For instance, a survey in Canada shows that 69% of participants agree with decriminalization of drug use, and the country has legalized some sort of drug use.⁵⁹ In Iran, a positive attitude to drug use is approximately 27%⁶⁰ which means that some people in Iran consider drug use optimistically. People's different attitudes toward drug use show that at least a lack of a coherent opinion prevails, and there is no consensus on prohibitionism. In the United States in 2014, "a national survey by

⁵⁷ Chartier, *supra* note 53, at 216.

⁵⁸ Eli Rosenberg, *Trump Is 'Most Excited' about Death Penalty for Drug Dealers. Rights Groups Say It's a Terrible Idea*, WASHINGTON POST (Feb. 15, 2019, 6:24 PM), <https://www.washingtonpost.com/politics/2019/02/15/trump-again-praises-strongmen-who-execute-drug-dealers-rights-groups-say-its-terrible-idea/>.

⁵⁹ Amy MacQuarrie & Caroline Brunelle, *Emerging Attitudes Regarding Decriminalization: Predictors of Pro-Drug Decriminalization Attitudes in Canada*, 52 J. DRUG ISSUES 114, 24 (2022). ANTI-DRUG ABUSE CODE, ARTICLE 15 (Iran) stipulates that "an addicted person would be exempted from prosecution if he went on treatment." (shorturl.at/pryz5).

⁶⁰ Donyaye Eqtesad, *Data on Social Vulnerabilities*, DONYAYE EQTESAD NEWSPAPER (Jan. 17, 2022).

the Pew Research Centre finds that 67% of Americans say that the government should focus more on providing treatment for those who use illegal drugs such as heroin and cocaine. Just 26% think the government's focus should be on prosecuting users of such hard drugs."⁶¹

Indeed, drugs have more severe effects than alcohol, but few people tend to commit crimes after using drugs. Drug laws tend to result in increased drug use and create opportunities for committing crimes.⁶² Rothbard proposes that crime stems from outlawing any product or service. In the black market, producers have no choice other than to raise their prices or lower the quality to reimburse the increased cost of production and distribution. Higher prices cause higher crimes such as theft committed by addicts, while producers are not exposed to the high costs of black markets and police payoffs in the absence of prohibition.⁶³ For instance, Mohajerpour et al. analyze the prevalence of violent crimes among methamphetamine users in Iran. Among 138 persons who committed crimes, 129 persons had previous criminal records, and 105 used methamphetamine before committing crimes. However, 75 of them had mental disorders. Armed theft was ranked first among the crimes they committed at 31.9%.⁶⁴

Under prohibitionism, producers' liability to enhance a product's quality or comply with the minimum production standards would be set aside because users are unlikely to follow up on any deceptive act by distributors or fake products through legal

⁶¹ PEW RSCH. CTR., AMERICA'S NEW DRUG POLICY LANDSCAPE REPORT (2014), <https://www.pewresearch.org/politics/2014/04/02/americas-new-drug-policy-landscape/>.

⁶² Doug Bandow, *From Fighting the Drug War to Protecting the Right to Use Drugs: Recognizing a Forgotten Liberty*, 256-7 (Fraser Inst., 2012).

⁶³ Murray N. Rothbard, *For a New Liberty: The Libertarian Manifesto*, 136 (Ludwig von Mises Inst., 2d. ed. 2006).

⁶⁴ Amir Mohammad Mohajerpour et al., *Prevalence of Violent Crimes due to Psycho Stimulant Substance in Criminals Referred to Psychiatric Examinations Department of Tehran Branch of LMO in 2013*, 22 IRANIAN J. FORENSIC MED. 103, 105 (2013).

procedure. For example, in the case of fentanyl, the Drug Enforcement Administration in the United States found that many drug users were not aware of purchasing heroin mixed with fentanyl.⁶⁵

Departing from prohibitive policy in drug-related activities is not an absurd idea. In 1955, the parliament outlawed the usage and cultivation of opium in Iran. However, due to its side effects, in 1969 Iran enacted a new law in which the cultivation of opium was legalized under the government's exclusive right and a harm reduction for addicted persons was facilitated.⁶⁶ Similarly, in 2001 Portugal decriminalized simple possession and acquisition of all illegal drugs. Instead of enforcing harsher sanctions or combating any so-called drug abuse, Portugal's government has concentrated on drug trafficking and enhancing health measures. Although Portugal has taken a conservative approach and prohibitionism is still in place, drug use prevalence has become lower compared to

⁶⁵ U.S. DRUG ENF'T ADMIN., FENTANYL, <https://www.dea.gov/factsheets/fentanyl> (last visited Jan. 22, 2022). "A lethal dose of Heroin for an adult man is about 30 milligrams. The lethal dose of Fentanyl is only 3 milligrams." For reviewing other side effects of fentanyl especially when users are not aware of it, *see* ADDICTION CENTER, HEROIN AND FENTANYL ADDICTION AND ABUSE, <https://www.addictioncenter.com/drugs/heroin/heroin-fentanyl/> (last visited Jan. 22, 2022).

⁶⁶ Ghiabi, *supra* note 30, at 64-6. After the Islamic revolution in 1979, Iran has tried to dismantle drug-related crimes. Also, alcoholic drinks have been banned by the government. In this case, one might suspect the possibility of the partial decriminalization of drug use. Notwithstanding this, Iran would be a controversial case due to the prohibition of both drugs and alcoholic drinks. Thus, any change in drug policy may shift the demands from each product to another. Here, the separation of addicted users from non-addicted is helpful. Possibly, some non-addicted users would be inclined to replace alcoholic drinks with legalized drugs, and it may increase the number of drug users in the country. But during the current prohibition policy, WHO's report indicates that based on total consumption of alcohol, Iran ranked 9 out of 189 countries. WORLD HEALTH ORG., GLOBAL STATUS REPORT ON ALCOHOL AND HEALTH (2018) <https://www.who.int/publications/i/item/9789241565639>. In this regard, there would be no deadlock in considering decriminalization.

other European countries.⁶⁷ Mexico is another country that decriminalized a small amount of drug possession in 2009, even though the lack of an efficient plan of treatment and harm reduction undermines its benefits.⁶⁸ More than 1,197 medium-term residential centers in Iran provide drug users with services⁶⁹ that can facilitate a decriminalization policy. This growing realization shows that government policy to ban drugs (the same as alcohol bans in the past) is aggression against individuals' moral choices.⁷⁰

With respect to the overall loss of the war and the more popular but less moral foundation of prohibitionism, it seems that changes in the strategy are highly needed. This change can begin with abstaining from incarcerating nonviolent drug offenders who have a low risk of recidivism. It can also reduce prison populations because “fewer drug users will be incarcerated, and the number of black-market dealers will lessen.”⁷¹ The analogy above entails that the drug war should be ended, but it is possible to use it to develop a better alternative instead. In this regard, AI risk assessment tools can open a new realm to the criminal justice system.

B. *AI Risk Assessment Tools: In Favor or Against Criminal Justice?*

DeMichele stipulates that “there is nothing inherent in risk assessments that will reduce jail populations, make prison populations less racially disparate, or otherwise reform the criminal

⁶⁷ See Ximene Rego et al., 20 Years of Portuguese Drug Policy - Developments, Challenges and the Quest for Human Rights, 16 *SUBSTANCE ABUSE TREATMENT, PREVENTION, AND POL'Y* 1, 2 (2021).

⁶⁸ Kellen Russoniello, The Devil (and Drugs) in the Details: Portugal's Focus on Public Health as a Model for Decriminalization of Drugs in Mexico, 12 *YALE J. HEALTH POL'Y* 371, 416 (2012).

⁶⁹ Hamed Ekhtiari et al., The Evolution of Addiction Treatment and Harm Reduction Programs in Iran: A Chaotic Response or a Synergistic Diversity?, 115 *ADDICTION* 1395, 1399 (2020).

⁷⁰ Murray N. Rothbard, *The Ethics of Liberty*, 272 (N.Y.U. Press, 1998).

⁷¹ Elkins, *supra* note 26, at 626.

justice system.”⁷² Although technology per se cannot completely solve the current problems of the War on Drugs and a policy revision such as Portugal’s experience is needed, opting for a validated risk assessment tool, and trying to correct its probable flaws is far more rational than refusing this solution.

1. Opponents of AI Risk Assessment Tools

AI is a controversial discussion in courtrooms. Some commentators doubt AI and believe that AI risk assessment tools devastate criminal justice and count against some nonviolent criminals. Thompson questions the efficiency of AI risk assessment tools and maintains that “by turning to computers, many states and cities are putting Americans’ fates in the hands of algorithms that may be nothing more than mathematical expressions of underlying bias.”⁷³

Waxler separates the theoretical from practical implications of any technological advancement, maintaining that criminal justice using technology is less fair.⁷⁴ She maintains that another problem with AI risk assessment tools is their developers. In fact, AI risk assessment tools belong to private businesses, which treat them as trade secrets; therefore, it is not easy to understand how they process data.⁷⁵ Nishi is concerned with the outsized role of private

⁷² Matthew DeMichele et al., *The Public Safety Assessment: A Re-Validation and Assessment of Predictive Utility and Differential Prediction by Race and Gender in Kentucky*, SSRN, 56 (Apr. 25, 2018), <http://dx.doi.org/10.2139/ssrn.3168452>.

⁷³ Derek Thompson, *Should We Be Afraid of AI in the Criminal-Justice System?*, THE ATLANTIC, (June 20, 2019), <https://www.theatlantic.com/ideas/archive/2019/06/should-we-be-afraid-of-ai-in-the-criminal-justice-system/592084/>.

⁷⁴ Rebecca Waxler, *When a Computer Program Keeps You in Jail*, N.Y. TIMES (June 13, 2017), <https://www.nytimes.com/2017/06/13/opinion/how-computers-are-harming-criminal-justice.html>.

⁷⁵ *Id.*

developers of these tools in sentencing.⁷⁶ It is highlighted that algorithms are influenced by their developers' bias either intentionally or unintentionally, and it is not easily traceable nor solved.⁷⁷ Moreover, Sourdin reminds us of the critical risks of using AI to replicate bias in courts unintentionally.⁷⁸

Some scholars focus mainly on the probability of racial discrimination. Reiling mentions that AI risk assessment tools, particularly COMPAS, overestimate recidivism risk among African Americans in comparison to Caucasian Americans, because they use historical data.⁷⁹ Iran has not used such instruments to predict the future dangerousness of drug offenders to date.⁸⁰ Nevertheless, the same risk might occur if these tools are used against drug offenders from ethnic groups located within Iran's eastern borders.

Here, the question is to what extent such bias is inherent in AI risk assessment tools and whether they solely can solve it. As

⁷⁶ Andrea Nishi, *Privatizing Sentencing: A Delegation Framework for Recidivism Risk Assessment*, 119 COLUM. L. REV. 1671, 1710 (2019).

⁷⁷ Preparing for the Future of Artificial Intelligence Report, Exec. Off. of the President Nat'l Sci. & Tech. Council Comm. on Tech., 31 (Oct. 2016).

⁷⁸ Tania Sourdin, *Judge V Robot? Artificial Intelligence and Judicial Decision-Making*, 41 UNSW L. J. 1114, 1129 (2018).

⁷⁹ Dory Reiling, *Courts and Artificial Intelligence*, 11(2) INT'L J. FOR CT. ADMIN. 1, 5 (2020). For a similar view see T. Douglas., *Risk Assessment Tools in Criminal Justice and Forensic Psychiatry: The Need for Better Data*, 42 (2) EUR. PSYCHIATRY 134, 136 (2017). See also Will Douglas Heaven, *Predictive Policing Algorithms Are Racist. They Need to be Dismantled*, MIT TECH. REV. (July 17, 2020), <https://www.technologyreview.com/2020/07/17/1005396/predictive-policing-algorithms-racist-dismantled-machine-learning-bias-criminal-justice/>.

⁸⁰ Despite this, based on article 203 of Criminal Procedure Law, prosecutors are bound to create a personality record file for some criminals who committed violent offences, or their punishments may be execution, life imprisonment, and so on. The personality record can also be assessed to determine whether a criminal has the merit of suspension and parole. The record consists of medical and psychological reports and the social conditions of an offender. See Parastoo Fereydooni & Ahmad Ramezani, *Personality Record and Its Role in Procedure (Case Study: Article 203 of Criminal Procedure Law)*, 10 J. OF POLITICS & L. 1, 4-7 (Sept. 4, 2017).

Southerland says, AI risk assessment tools “reflect back to us the world that we live in.”⁸¹ Racial discrimination has had a long history in the United States, and prohibitionism gives teeth to institutional racism in the criminal justice system.⁸² Bradley stipulates that “for law enforcement, the easiest way to enforce drug laws is to target poor minority neighborhoods.”⁸³

2. Proponents of AI Risk Assessment Tools

In contrast, proponents think about the possibility of using these tools to correct criminal justice errors or reduce them. They acknowledge that not all technological innovations are empty of bugs or flaws. One might not construe that criminal justice should be deprived of AI risk assessment tools. As Green emphasizes, when computer scientists understand the requirements of criminal justice and its necessary developments, they can come out of pure technological nature and align AI risk assessment tools with these developments.⁸⁴

“AI, to work, needs big data,”⁸⁵ and the government’s enriched data can afford it.⁸⁶ In addition, humans’ contributions are crucial in terms of the type and volume of information provided.⁸⁷

⁸¹ Southerland, *supra* note 12, at 566.

⁸² Alvaro Piaggio & Prachi Vidwans, *The Cost and Consequences of War on Drugs*, HUM. RTS. FOUND. REP. (2019), https://hrf.org/wp-content/uploads/2019/05/WoD_Online-version-FINAL.pdf.

⁸³ Bradley, *supra* note 31, at 137.

⁸⁴ Ben Green, *Fair Risk Assessments: A Precarious Approach for Criminal Justice Reform*, 5th Workshop on Fairness, Accountability, and Transparency in Machine Learning (FAT/ML 2018), <https://scholar.harvard.edu/bgreen/publications/%E2%80%9Cfair%E2%80%9D-risk-assessments-precarious-approach-criminal-justice-reform>.

⁸⁵ Reiling, *supra* note 80, at 2.

⁸⁶ Cade Metz & Adam Satariano, *An Algorithm That Grants Freedom, or Takes It Away*, N.Y. TIMES (Feb. 6, 2020), <https://www.nytimes.com/2020/02/06/technology/predictive-algorithms-crime.html>.

⁸⁷ See Jessica Eaglin, *Constructing Recidivism Risk*, 67 EMORY L. J. 59, 73 (2017) (“Data collection choices, like where and how to collect data and

It is also possible to detect and mitigate factors that might cause a discriminatory outcome and interfere with the efficacy of AI tools.⁸⁸

Goel et al. note that well-established algorithms to predict recidivism are an excellent source of information about offenders' future dangerousness. They reiterate that we need efficient risk assessment tools and proper usage in the criminal system.⁸⁹ Further, Kleinberg et al. show that the more accurate identification of an offender's risk, the fewer rate of crimes and incarceration.⁹⁰ Overall, AI risk assessment tools benefit courts by providing a risk assessment outcome, reducing the time that a court should allocate to a drug-related case and decreasing the possibility of a partial decision of a court.⁹¹

how to assemble a data set, provide the foundation for actuarial tools developed to assess recidivism risk. These decisions have a significant effect on the outcomes of the tools.”).

⁸⁸ Partnership on AI, *Report on Algorithmic Risk Assessment Tools in the U.S. Criminal Justice System*, 18 (Apr. 23, 2019), <https://partnershiponai.org/paper/report-on-machine-learning-in-risk-assessment-tools-in-the-u-s-criminal-justice-system/>. Further, Brennan et al. prove that “the COMPAS risk models reach levels of reliability, predictive validity, and generalizability that are at least equal to those of other major instruments in offender risk assessment.” See Tim Brennan, William Dietrich, & Beate Ehret, *Evaluating the Predictive Validity of the COMPAS Risk and Needs Assessment System*, 36 CRIM. JUST. & BEHAV. 21, 34 (2009).

⁸⁹ Sharad Goel et al., *The Accuracy, Equity, and Jurisprudence of Criminal Risk Assessment*, RESEARCH HANDBOOK ON BIG DATA LAW 9, 23 (Edward Elgar Publ'g, 2021).

⁹⁰ Jon Kleinberg et al., *Human Decisions and Machine Predictions* (Nat'l Bureau of Econ. Rsch., Working Paper No. 23180, 2017), <http://www.nber.org/papers/w23180>.

⁹¹ Olatz Cibrian Egado, *Artificial Intelligence in Criminal Justice Settings: Where Should be the Limits of Artificial Intelligence in Legal Decision-making? Should an AI Device Make a Decision about Human Justice?*, 81 (Degree in Criminology academic paper, Universidad del País Vasco 2020).

C. AI Risk Assessment Tools During Prohibitionism

It can be seen that a predictive risk assessment tool can be used in collaboration with any attempt to avoid incarcerating nonviolent drug offenders. According to the abovementioned arguments, imprisonment for nonviolent drug offences, particularly long-term, is not proportionate to the crime. Nor does it make society safer. Based on proponents' arguments, humans can control what types of data should be used to predict the future dangerousness of a drug offender to avoid biased outcomes and provide a more reliable prediction. It should be noted that nearly 70% of the prisoners in Iranian prisons were involved in drug-related crimes.⁹² In addition, in 2016, 64% of inmates in Iranian prisons were married, and more than 9,000 of them had two or more children. The most significant proportion of inmates (43%) were incarcerated for drug-related offences.⁹³ Thus, research shows that reducing recidivism is possible by taking into account an offender's level of risk in creating a suitable program and validated risk assessments can separate high-risk offenders from low-risk ones.⁹⁴ Nevertheless, some families would be broken by imprisoning nonviolent offenders, and children would be deprived of their parents.

"Iran is one of the countries where drug use prevalence has increased in recent years"⁹⁵ Except for 1979-1989, the rate of drug use constantly rises during 1990-2020,⁹⁶ even though the

⁹² 70% of prisoners in Iran involved in drug crimes, Tehran Times (Nov. 3, 2020), <https://www.tehrantimes.com/news/454209/70-of-prisoners-in-Iran-involved-in-drug-crimes>.

⁹³ 64% of Inmates Are Married (May 22, 2017), <http://shabestan.ir/mobile/detail/news/630623>.

⁹⁴ Pew Research Centre, *Risk/Needs Assessment 101: Science Reveals New Tools to Manage Offenders*, Issue Brief Report, (Sept. 20, 2011), http://www.pewtrusts.org/~media/legacy/uploadedfiles/pes_assets/2011/PewRiskAssessmentbriefpdf.pdf.

⁹⁵ Moradinazar et al., *supra* note 33, at 9.

⁹⁶ Tabnak, *Status of Drug Consumption in Iran*, (June 21, 2020), tabnak.ir/0048Pq.

government has struggled to contain drug (ab)use. Considering Iran’s law, a person who possesses thirty grams of methamphetamine would be executed. Also, the government must confiscate his property regardless of his violent or nonviolent action on the criminal record. However, if he had no criminal record related to drug offences, failed to distribute methamphetamine, and the size of methamphetamine did not exceed 100 grams, he would be sentenced to life imprisonment rather than execution.⁹⁷ In such a case, AI risk assessment tools should measure the risk of recidivism and detainees’ dangerousness to society. In this sense, factors such as age, criminal record, particularly violent crimes, education, employability, housing, family ties, and so forth can be analyzed⁹⁸ to determine the dangerousness of the drug offender in the mentioned case and consider his release. It is worth noting that developing AI risk assessment tools does not mean that they want to make decisions independently. It is better to understand them like an assistant to humans who oversee making decisions.⁹⁹

Brennan, one of the creators of COMPAS, emphasizes that “I don’t like the idea myself of COMPAS being the sole evidence that a decision would be based upon.”¹⁰⁰ Similarly, Završnik stipulates that preserving justice, in any case, might require the court to consider factors other than those processed by the risk assessment tool.¹⁰¹ In this regard, the criminal system should authorize judges to consider additional evidence or defeaters. Hence, in the case of

⁹⁷ ANTI-DRUG ABUSE CODE, ARTICLE 8 [2017] (Iran)
(<https://www.iranrights.org/library/document/3732>)

⁹⁸ Sarah L. Desmarais & Evan M. Lowder, *Pretrial Risk Assessment Tools; A Primer for Judges, Prosecutors, and Defense Attorneys*, SAFETY + JUST. CHALLENGE, 4 (2019).

⁹⁹ O’Brien, *supra* note 41, at 81.

¹⁰⁰ Julia Angwin et al., *Machine Bias*, ProPublica (May 23, 2016), <https://www.propublica.org/article/machine-bias-risk-assessments-in-criminal-sentencing>.

¹⁰¹ Aleš Završnik, *Criminal Justice, Artificial Intelligence Systems, and Human Rights*, 20 ERA F. 567, 572 (Feb. 20, 2020).

defeaters, the judge has the right to dissent from AI's predictive outcome.

Finally, change in the drug war is required, and AI can assist the criminal system with this change. They would be helpful to accelerate the process of policy change in the drug war.¹⁰² Otherwise, using these tools might bedevil the situation. Technology should not be in the service of outdated drug-war policies. It must be outlined that we cannot have a cake and eat it too; therefore, a fair standpoint is to prevent nonviolent drug offenders from imprisonment. Prison is far from a rehabilitative expectation and can be considered the university of crime and felony.¹⁰³ The solution is not the total elimination of AI risk assessment tools from criminal procedures, but it is possible to improve and use them cautiously.¹⁰⁴ That is why the efficacy of such tools has a close tie to the government's policy on drug prohibition. Then, it is contended that AI risk assessment tools should be used by considering the decriminalization perspective.

IV. CONCLUSION

This article reaffirms that the War on Drugs is not a reliable option for a given society but rather a failed attempt to control drug use and abuse. Hence, a paradigm shift should occur in this sense. There are multiple negative impacts that the war on drugs injects into society. This wastes hundreds of millions of dollars and ruins many lives, necessitating a radical change in the drug war. Cost-effectiveness analysis indicates that Iran and the United States have

¹⁰² Caleb Watney, *It's Time for Our Justice System to Embrace Artificial Intelligence*, BROOKINGS: TECHTANK (July 20 2017) <https://www.brookings.edu/blog/techtank/2017/07/20/its-time-for-our-justice-system-to-embrace-artificial-intelligence/>.

¹⁰³ *Prison Can Be the University of Crime and Felony*, IRANIAN LABOUR NEWS AGENCY (Dec. 5, 2020) <https://www.ilna.news/fa/tiny/news-1005998>.

¹⁰⁴ Jasper Ulenaers, *The Impact of Artificial Intelligence on the Right to a Fair Trial: Towards a Robot Judge?*, 11 *ASIAN J. OF L. AND ECON.* 1, 10 (2020).

failed to reach their ambitious goal in the War on Drugs. Both countries have tried various plans, from strict border controls to harsher punishments to reduce drug-related crimes, when it appears that prioritizing a suppressive approach and total criminalization of drug-related activities could not reach tangible results.

There is a correlation between crime rates and drug use, but the determinant factor that prompts drug users to commit crimes is the rising prices that flow from outlawing drugs. The inelasticity of drug demands shows that not all drug users are addicts, and not all addicts are inclined to commit crimes; therefore, imposing harsher punishments is ineffective in controlling the drug market. Rather than increasing the budget of law enforcement, targeting poor users of drugs, and imposing harsher sentences on drug offenders, a key policy priority ought to be reducing prison populations without insisting on overcriminalization.¹⁰⁵

AI risk assessment tools would be part of a criminal procedure to reduce the socioeconomic impacts of the drug war by releasing nonviolent drug offenders. However, this is the first step toward criminal justice that should be taken firmly to prepare society for a fundamental reformation in drug war policies. It is a plausible point that AI risk assessment tools might distort criminal justice or deteriorate the status of nonviolent drug offenders by bias or lack of information. Yet, it is insightful to claim that these tools ought to be considered absent relevant defeaters so that humans can still supervise their outcomes and maintain criminal justice. Eventually, relying solely on AI risk assessment tools to predict recidivism without addressing chronic issues in a criminal system, ignoring a rehabilitative plan, and deferring decriminalization might not constitute a radical change in criminal justice.¹⁰⁶ Nevertheless, these tools can reduce the risk of recidivism and prepare the ground for a decriminalization phase in a given society.

¹⁰⁵ Kleinberg, *supra* note 91.

¹⁰⁶ “Effective rehabilitation would result in much lower rates of recidivism, thereby triggering massive cuts to government prison budgets, not to mention the police and court budgets.” *See supra* Friday note 47.