



## **The Silk Road, Bitcoins and the Global Prohibition Regime on the International Trade in Illicit Drugs: Can this Storm Be Weathered?**

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### **Abstract:**

This paper examines the effects of the Silk Road on the global prohibition regime on the international trade in illicit drugs. Situating the FBI's effort in shutting down the online illicit drugs black market, it is argued that The Silk Road represents a fundamental challenge to this global prohibition regime. The paper will look at how this challenge is shaped through the technological difficulties the complexities of The Silk Road has dealt law enforcement agencies and legislative bodies looking to regulate and expand this prohibition regime in the virtual world. It is also argued that the approach taken by law enforcement efforts in this regard is problematic and doomed to fail. Lastly, this paper looks at controlled samples of social media reactions to gauge public response to this phenomenon in order to explain the lack of clear moral opprobrium against this type of criminal activity.

### **Résumé :**

Cet essai examine les effets de la plateforme *Silk Road* sur le régime de prohibition globale du commerce international de drogues illicites. Localisant les efforts du FBI visant à fermer le marché noir en ligne de drogues, on reconnaît que *Silk Road* représente un défi fondamental au régime de prohibition globale. Cet essai explore ensuite les manières dont la technologie a façonné les tactiques et stratégies utilisées par les organismes d'application de la loi et les organes législatifs cherchant à réguler et à combattre ce monde illicite virtuel. Plus spécifiquement, on illustre la problématique de l'approche transparaissant des efforts d'application de la loi à cet égard, argumentant ainsi qu'elle soit vouée à l'échec. Enfin, cet essai analyse des échantillons contrôlés des réactions sur les médias sociaux afin de mesurer la réponse du public à ce phénomène et d'expliquer le manque d'opprobre moral clair contre ce type d'activité criminelle.

The global prohibition regime on the international trade in illicit drugs is a relatively recent phenomenon. This regime finds its origins in the early twentieth century and is a part of the broader system of international norms and regulations arising from American hegemony and is historically without precedent. Conversely, the historical Silk Road traversed much of the ancient known world and connected civilizations through trade for centuries. Merchants from across the world travelled safely, for the most part, on this road and took part in a vibrant globalized trade. Centuries later, a new Silk Road was allegedly created by 29 year-old Mr. Ross William Ulbricht, the self-styled Dread Pirate Roberts.<sup>1</sup> The Silk Road relevant to this discussion is a web page that cannot be accessed through routine means. This black market trading in illicit drugs is placed within the Dark Web, in a deeper layer of the Internet than the one accessed through regular URLs used by majority of the websites. During its two-and-a-half year run, the “E-bay of illicit drugs”<sup>2</sup> facilitated more than \$1 billion in transactions, according to the FBI.<sup>3</sup> Utilizing the crypto-currency Bitcoin, it protected all financial transactions from the watchful eye of the anti-money laundering checks and balances. It also utilized Tor, an Internet browser ironically created by the US government, which can grant access to the Dark Web.

I set out to analyse how such technological advances challenge law enforcement. To do so I will answer the ‘why’ and ‘how’; Firstly why there is a potential within such technology to present a challenge and secondly, how is law enforcement confronted and responding. Since this response to the drug trade is the centerpiece of the global prohibition regime on the international trade in illicit drugs, any attempt to analyze the law enforcement’s responses to such phenomenon must include a critique of this regime as well.

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<sup>1</sup> Alex Konrad, "Feds Say They've Arrested 'Dread Pirate Roberts,' Shut Down His Black Market 'The Silk Road'," *Forbes*, <http://www.forbes.com/sites/alexkonrad/2013/10/02/feds-shut-down-silk-road-owner-known-as-dread-pirate-roberts-arrested/>.

<sup>2</sup> Joshua Kopstein, "How Ebay of Illegal Drugs Came Undone," <http://www.newyorker.com/online/blogs/elements/2013/10/fbi-silk-road-ross-ulbricht-allegations-arrest.html>.

<sup>3</sup> Konrad, "Feds Say They've Arrested 'Dread Pirate Roberts,' Shut Down His Black Market 'The Silk Road'".

I will argue that the modern Silk Road and similar apparatus have placed unrivalled pressure on the regime's underpinnings. I will attempt this analysis in two steps. Firstly, I will develop the context and background of the subject and a review of the literature. Secondly, I will present relevant conceptual tools such as anti-sovereignty<sup>4</sup> in Dark Web, nomadic capitalism and criminal business<sup>5</sup>, the uniqueness of The Silk Road in limiting possible demand focused law enforcement efforts, and the global regime of prohibition of international trade in illicit drugs.<sup>6</sup> I will also survey Twitter in an attempt to gauge cultural trends in responses to The Silk Road and another similar case and consequently analyse the findings. Relying on these, I will attempt to build a case outlining the ways in which technologically intricate tools such as The Silk Road and Bitcoin present tremendous challenges to the enforcement arms of this global regime.

## **Background**

### *The Silk Road, Tor and Dark Web*

The simplest way to explain The Silk Road to the uninitiated would be to say that it is the e-Bay of illicit drugs. To understand The Silk Road, however, one must look to the technological platforms it utilizes. The Silk Road is inaccessible to anyone not using the Tor browser and relying on conventional software. Tor was created by the Swedish and American governments in a US Naval research laboratory and eventually released in 2001.<sup>7</sup> It was created primarily for privacy of communication and leaves no trace of virtual activity. It has important legitimate uses such as inter-governmental and classified communication as well as providing safe communication channels to non-governmental organizations and their staff in

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<sup>4</sup> Ronen Palan, "Crime and the global political economy," ed. H Richard Friman (Lynne Rienner Publishers, 2009), 35-62.

<sup>5</sup> R. Palan, *The Offshore World: Sovereign Markets, Virtual Places, and Nomad Millionaires* (Cornell University Press, 2006). 133.

<sup>6</sup> Frank Madsen, *Transnational organized crime*, vol. 34 (Taylor & Francis, 2009). 12-36.

<sup>7</sup> Tor Project, "Uses for Tor," Tor Project, <https://www.torproject.org/about/torusers.html.en>.

high-risk situations.<sup>8</sup> Tor differs from conventional browsers in its transmission methods. Every Tor user becomes a “node” in the network and traffic is bounced through at least three such nodes before reaching its destination. When the browser of a prospective buyer attempts to contact The Silk Road server, these nodes set up a virtual meeting point within the Tor network so that the two parties can communicate while keeping IP addresses and digital footprints hidden from third parties as well as anyone involved.

The Silk Road is only one of such websites being used to perpetuate illicit activity. This part of the internet is commonly known as the Dark Web, a phrase that refers to content that is not accessible or indexed by search engines like Google.<sup>9</sup> An important part of the Dark Web is the “Hidden Wiki”, a Wikipedia type webpage that has a collection of links to the websites active in the Dark Web. The Silk Road is only one of the vendors in this market; links on the “Hidden Wiki” include avenues for child pornography, murder for hire, counterfeit money and other illicit websites.<sup>10</sup> The Dark Web is indeed a dark place. Though in all fairness, The Silk Road’s seller’s guide clearly mentions: “Do not list anything who's purpose is to harm or defraud, such as stolen items or info, stolen credit cards, counterfeit currency, personal info, assassinations, and weapons of any kind. Do not list anything related to pedophilia.” The guide also outlines a detailed description of an expectation of a high standard in customer service.<sup>11</sup>

Although Tor and the Dark Web have been subject to NSA, FBI and United States Secret Service enforcement efforts and heavy monitoring<sup>12</sup>, Tor has continually provided

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<sup>8</sup> Ibid.

<sup>9</sup> Alex Wright, "Exploring a 'deep Web' that Google can't grasp," New York Times 23 (2009).

<sup>10</sup> This has drawn reactions from the “hacktivist” group Anonymous. In 2011, they took down the objectionable website as part of Anonymous’ Operation Dark net, an anti-child-pornography effort aimed at thwarting child pornographers operating on the Tor network. <http://arstechnica.com/business/2011/10/anonymous-takes-down-darknet-child-porn-site-on-tor-network/>

<sup>11</sup> Andy Greenberg, "Collected Quotations Of The Dread Pirate Roberts, Founder Of Underground Drug Site Silk Road And Radical Libertarian," Forbes, <http://www.forbes.com/sites/andygreenberg/2013/04/29/collected-quotations-of-the-dread-pirate-roberts-founder-of-the-drug-site-silk-road-and-radical-libertarian/3/>.

<sup>12</sup> Committee on Homeland Security and Governmental Affairs, Beyond Silk Road: Potential Risks, Threats, and Promises of Virtual Currencies, 18th November 2013 2013.

exceptional anonymity . “More brazen than anything else by light-years” is how U.S. Senator Charles Schumer characterized The Silk Road when it first hit the US legislators’ radar.<sup>13</sup> This sense of security has been key for The Silk Road users who, assured by these intricate tools, were part of a thriving illicit market until the FBI succeeded in shutting down the website for one month<sup>14</sup> following the arrest of the man behind it all.

### *Bitcoin*

As with everything about The Silk Road, the payment system it relies on is also opaque. Created by an individual or a group of people under the pseudonym of Satoshi Nakamoto, Bitcoin is a decentralized currency in two ways: firstly, no central authority administers this revolutionary crypto-currency. Secondly, the peer-to-peer currency concept means that users volunteer their computer to be a part of the network when “mining bitcoins”<sup>15</sup>. The self-professed goal behind the creation of Bitcoin was the inventors’ frustration at the recent global financial meltdown.<sup>16</sup> It is simply a “peer-to-peer payment system for use in online transactions.”<sup>17</sup> Every transition in The Silk Road must be done through Bitcoins. It is notable that one of the few arrests related to The Silk Road occurred essentially because the vendor accepted a Western Union payment in exchange for cocaine. Therefore, the anonymity that Bitcoin provides The Silk Road users has been key in how the law enforcement has been challenged.

One cannot dispute that Bitcoin is a futuristic concept. Whether or not it will become part of the mainstream financial market, it has shown itself to be technologically sound while

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<sup>13</sup> Jason Koebler, “Online Black Drug Market Sees Growth Double”, US News, <<http://www.usnews.com/news/articles/2012/08/07/online-black-market-drug-haven-sees-growth-double>>.

<sup>14</sup> John Cook, "Senators Already Trying to Shutter Online Drug Market," Gawker, <http://gawker.com/5808701/senators-already-trying-to-shutter-online-drug-market>.

<sup>15</sup> Satoshi Nakamoto, "Bitcoin: A peer-to-peer electronic cash system, 2009", <http://www.bitcoin.org/bitcoin.pdf> (2012).

<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

open to wild speculation when under media spotlight. When the US Senate Committee on Homeland Security and Governmental Affairs held a hearing titled “Beyond The Silk Road: Potential Risks, Threats And Promises Of Virtual Currencies”, its value skyrocketed to the 700 US Dollars per Bitcoin mark due to the favourable outlook shown by the legislature body.<sup>18</sup>

### *The Literature*

One should be aware that the subject at hand is an unprecedented move into uncharted waters by transnational crime. Therefore, with the exception of the works of Marie Claire Van Hout and Tim Bingham<sup>19</sup> and Nicolas Christin<sup>20</sup> studying the user experience in The Silk Road, little scholarly attention has been given to The Silk Road and Bitcoin. This is especially evident within the realm of International Relations where transnational crime has become a focal point for research.<sup>21</sup> However, scholars such as Reuben Grinberg<sup>22</sup> and Joshua J Douget<sup>23</sup> have done extensive studies on Bitcoin. It is entirely possible that this is due to the fact that The Silk Road and Dark Web are not as accessible for research as other subjects, as explained by Van Hout and Bingham.<sup>24</sup> Scholars could also see this phenomenon as an insignificant offshoot of crime, a view with which I disagree. The Silk Road’s refusal to permanently disappear after the FBI proudly announced that it had the alleged mastermind in custody, and Bitcoin’s trend of arguably inevitable rise into mainstream financial market

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<sup>18</sup> Dominic Rushe, "Bitcoin hits \$700 high as Senate stages hearing on virtual currency," The Guardian, <http://www.theguardian.com/technology/2013/nov/18/bitcoin-risks-rewards-senate-hearing-virtual-currency>.

<sup>19</sup> Marie Claire Van Hout and Tim Bingham, "Silk Road, the virtual drug marketplace: A single case study of user experiences," *International Journal of Drug Policy* 24, no. 5 (2013).

<sup>20</sup> Nicolas Christin, "Traveling the silk road: a measurement analysis of a large anonymous online marketplace," in *Proceedings of the 22nd international conference on World Wide Web (Rio de Janeiro, Brazil: International World Wide Web Conferences Steering Committee, 2013)*.

<sup>21</sup> Madsen, *Transnational organized crime*, 34: 95.

<sup>22</sup> Reuben Grinberg, "Bitcoin: An Innovative Alternative Digital Currency," *Hastings Science & Technology Law Journal* 4(2011).

<sup>23</sup> Joshua J Douget, "The Nature of the Form: Legal and Regulatory Issues Surrounding the Bitcoin Digital Currency System," *La. L. Rev.* 73(2013).

<sup>24</sup> Van Hout and Bingham, "Silk Road, the virtual drug marketplace: A single case study of user experiences," 220.

shows us that these types of ventures are important if scholars are to look at the future of transnational crime rather than only the old trends.

### **Antisovereignty and the Dark Web**

Ronen Palan provides insight into how criminal business operates in vacuums of law and order while sovereignty withers.<sup>25</sup> Thus, criminal entrepreneurship actively attempts to lessen sovereignty and as “areas of anti-sovereignty” in failed or weaker states become apparent, it endeavours to move in that direction.<sup>26</sup> The Silk Road as a criminal business is undeniably part of this trend. However, the territory of this criminal business is virtually situated. The Dark Web forms an area of anti-sovereignty that is utilized by organized crime in a similar fashion as how territories in failed states devoid of a powerful central government would provide a competitive edge for criminal businesses operating in the physical world.

The issue of jurisdiction over virtual activity has been a legally challenging concept since the inception of the Internet. But the Dark Web and The Silk Road exacerbate this issue and provide an unrivalled challenge to law enforcement. This space of anti-sovereignty makes it extremely difficult to apply national laws. The users, protected by absolute anonymity, confidently undertake illicit behaviour.

If you step back and look at the recent developments with the arrest of the alleged Dread Pirate Roberts and the shutdown of The Silk Road for a month, one realizes that the handful of arrests to date, considering the volume of trade in illicit and controlled substances, is astonishingly unimpressive. Meanwhile, the FBI, The Secret Service and the NSA as institutions have always attempted to feign a striking ability to deal with cybercriminals. This was especially apparent in the recent Senate hearing on Bitcoin and The Silk Road.<sup>27</sup> In her

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<sup>25</sup> Palan, *The Offshore World: Sovereign Markets, Virtual Places, and Nomad Millionaires*: 162.

<sup>26</sup> *Ibid.*

<sup>27</sup> Committee on Homeland Security and Governmental Affairs. *Beyond Silk Road: Potential Risks, Threats, and Promises of Virtual Currencies*, 18th November 2013.

testimony, Mythili Raman, the Acting Assistant Attorney General of the US Department of Justice, followed the same line of logic; showcasing the power of law enforcement by mentioning past cases that have been successfully dealt with such as Liberty Reserve and E-gold. Although these kinds of proclamations arguably help the image of public safety, none of the successful cases mentioned were of the same technological intricacy as The Silk Road, such as operating in the Dark Web or using a crypto-currency. Evidently, unless law enforcement agencies penetrate the Dark Web's aura of anti-sovereignty, it will continue to be a safe haven for criminal business. The latest arrest of Ross Ulbricht by the FBI cannot be credited with having done so, primarily because the FBI followed his real life tracks in the conventional parts of the Internet. Had he been more careful, his arrest would have been unlikely.

### **Nomadic Capitalism and Criminal Business**

In the 1976 Watergate film "All President's Men," the shadowy whistleblower character Deep Throat proclaims: "Follow the money. Always follow the money!" To which Bob Woodward's character responds: "To where?"<sup>28</sup> Following the money in the case of criminal business is notable in pointing out how law enforcement is challenged by these developments. In his book on the offshore world, Palan critiques capitalism within the global political economy and the nomadic nature of capital.<sup>29</sup> While central governments draw heavy lines between legal and illegal, the economic forces and capital markets have not shown an interest in doing so. Criminal business and organized crime are indeed profit-driven and act as other businesses do. In this regard, they have always been nomadic, especially when acting transnationally. In behaving this way criminal business has managed to not only

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<sup>28</sup> Alan J. Pakula, "All the President's Men," (United States of America 1976).

<sup>29</sup> Palan, *The Offshore World: Sovereign Markets, Virtual Places, and Nomad Millionaires*: 162.



relocate finances, but also the focal point of its interests when presented with new opportunities and new areas ripe with profit and invincibility.

Bitcoin is an apt example of this phenomenon. While it is an innovative and well-designed tool attracting legitimate business and providing fast and secure transactions globally, it is also being used for trafficking of drugs, purchasing of illicit guns and child pornography. Notably, during the time Nicholas Christin surveyed The Silk Road, it accounted for a significant 4.5 to 9 percent of all Bitcoin transactions.<sup>30</sup> Therefore, Bitcoin has provided new ways for criminal businesses to engage customers and develop further. Although Bitcoin accounts are public, they are incredibly difficult to track back to the owner, especially when there is no bank account or virtual footprint associated with an electronic wallet containing Bitcoins, which is usually the case.

The Silk Road is also an apt example; providing anonymity and an unrivalled market structure to criminal business. For instance, it has given drug dealers the ability to purchase illicit drugs in bulk in the comfort of their homes delivered by a courier service and safe from law enforcement. Such an opportunity draws in criminal business as it provides new avenues for profit.

Although the law enforcement agencies in some countries are stuck in the age of floppy disks and VHS tapes, there has been a significant push towards increasing their capability in handling cybercrime. As a result, criminal business will naturally resort to more complicated methods such as Bitcoins and the Dark Web. These kinds of shifts in capital by criminal business will continue to challenge law enforcement agencies that are focused on “following the money,” especially when coupled with the unusually complicated methods needed to apprehend criminals using these methods.<sup>31</sup>

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<sup>30</sup> Christin, "Traveling the silk road: a measurement analysis of a large anonymous online marketplace."

<sup>31</sup> RT Naylor, "11 Follow-the-Money Methods in Crime Control Policy," Critical reflections on transnational organized crime, money laundering and corruption (2003).

The operational aspect is the only part of the challenge by criminal businesses moving their finances nomadically to sectors that are not as known to the law. This phenomenon has also given rise to important legislative issues. US Senator Carper compared the rise of Bitcoin to the onset of the Internet in terms of the challenges and opportunities.<sup>32</sup> This is an apt analogy, showcasing on a macro level, the challenge the rise of Bitcoin and The Silk Road provides the legislative initiatives behind law enforcement that aim to harness innovative ideas like Bitcoin and the Internet in order to allow them to benefit the economy while limiting their criminal offshoots.

### **Difficulty of Demand Focused Efforts in the Case of The Silk Road**

The three aspects of the law enforcement efforts against The Silk Road and other similar criminal businesses have been to track the criminal proceeds, limit the profits of crime and tightening of the global anti-money laundering regime. These approaches have been behind almost every arrest related to The Silk Road. But they have been overwhelmingly supply-side focused efforts. In *Wages of Crime*, Naylor provides a relevant critique of how focusing on the supply-side of transnational crimes that are purely demand-driven has been catastrophically ineffective.<sup>33</sup>

To approach criminal phenomena that are market driven by applying law enforcement techniques fit for predatory crimes is arguably even less effective in the case of The Silk Road. Interestingly, Naylor claims: “Never in history, a black market has been defeated from the supply-side.”<sup>34</sup> He argues that investigations into crimes of vice, especially when they are

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<sup>32</sup> Beyond Silk Road: Potential Risks, Threats, and Promises of Virtual Currencies.

<sup>33</sup> George Murkin Steve Rolles, Martin Powell, Danny Kushlick, Jane Slater, "The Alternative World Drug Report: Counting the costs of the war on drugs," (Count the Costs, 2012).

<sup>34</sup> RT Naylor, "11 Follow-the-Money Methods in Crime Control Policy," Critical reflections on transnational organized crime, money laundering and corruption (2003).

demand-driven are “selective” and charges brought in front of courts are not due to the nature of the offence, but have become based on the person’s importance in the crime’s hierarchy.<sup>35</sup>

The investigation of The Silk Road by the FBI and the recent arrest of the alleged creator of the website is a clear example of this. The FBI cannot possibly apprehend thousands of people who took part in transactions around the world through The Silk Road, so, in turn it focuses on the creator of the black market to take down the website. The police usually aim to instill fear within the ranks of transnational and organized crime syndicates through making arrests. However, in this case the illicit drugs black market came back online within a month and continued as before, even making a mockery of the FBI notice of webpage takedown that was proudly displayed on The Silk Road home page. Also according to the new Dread Pirate Roberts, the website has been backed up allowing it to go back online within 15 minutes if the administrator is captured again.<sup>36</sup>

After providing a measurement analysis of The Silk Road, Christin provides four ways in which the authorities could intervene and disrupt The Silk Road: (1) disrupting the network; (2) disrupting the financial infrastructure; (3) disrupting the delivery model; or (4) laissez-faire.<sup>37</sup> He then argued that the first two are shown to be technologically impossible. The laissez-faire approach suggested by Christin would tackle the issue by detachment and allowing the market forces to disrupt such behaviour. Interestingly Christin’s suggestion is the only demand-focused approach. He does go on to say that it is the least likely approach for the US government or some of its allies to adopt. This could be because of the war on drugs and the existing normative agenda surrounding the issue. Indeed, disrupting the delivery model is a method that has been attempted. However, it has led to higher costs and increased difficulty of full commitment at a time marred by budget constraints for the law

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<sup>35</sup> Ibid.

<sup>36</sup> Fran Berkman, "Silk Road Reborn: There's a New Dread Pirate Roberts," Mashable, <http://mashable.com/2013/11/06/silk-road-dread-pirate-roberts/>.

<sup>37</sup> Christin, "Traveling the silk road: a measurement analysis of a large anonymous online marketplace," 219-24.

enforcement agencies.<sup>38</sup> This method also requires coordination through an inter-agency effort mounted between Customs and other law enforcement arms to coordinate. Interestingly, Mythili Raman, the Acting Assistant Attorney General of the US Department of Justice mentioned in her recent testimony to the US Senate that “to promote such coordination, the Department is an active participant in the Virtual Currency Emerging Threats Working Group (VCET).”<sup>39</sup> The FBI created the VCET in February 2012.<sup>40</sup> Thus, we can conjecture that law enforcement agencies may be looking to academics for answers in complicated cases such as these. To his credit, Edward W. Lowery III, the Secret Service Special Agent in charge, did briefly mention coordination with academia in his testimony to the US Senate hearing on Bitcoin.<sup>41</sup> However, all efforts undertaken in this case, especially pertaining to the arrest of Ross Ulbricht, have been supply-side focused, pointing to the distinct brittleness in public policy regarding the international trade in illicit drugs.

Furthermore, The Silk Road’s shield of anonymity and the sense of invulnerability it provides the buyers and sellers of illicit drugs are factors that dissuade even demand-focused anti-crime law enforcement and legislative efforts. Accordingly, The Silk Road pushes law enforcement to follow a supply-side focused agenda to bring down one black market after another, or one drug dealer after another, essentially playing whack-a-mole with the international trade in illicit drugs.

This is a unique way in which The Silk Road challenges the various law enforcement agencies fighting cybercrime. While other market-driven criminal enterprises have also not been limited by supply-side effort, The Silk Road’s characteristics exacerbate that difficulty

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<sup>38</sup> Beyond Silk Road: Potential Risks, Threats, and Promises of Virtual Currencies; Van Hout and Bingham, "Silk Road, the virtual drug marketplace: A single case study of user experiences."

<sup>39</sup> Committee on Homeland Security and Governmental Affairs. Beyond Silk Road: Potential Risks, Threats, and Promises of Virtual Currencies, 18th November 2013.

<sup>40</sup> Caleb Chen, "What Is The Virtual Currency Emerging Threats Working Group (VCET)? Did they invite CoinValidation To Join?," <http://bitcoinblogger.com/what-is-the-virtual-currency-emerging-threats-working-group-vcet/>.

<sup>41</sup> Beyond Silk Road: Potential Risks, Threats, and Promises of Virtual Currencies.

## **Global Regime of Prohibition of International Trade in Illicit Drugs**

The likely rise of cybercrime in the form that The Silk Road has taken is not only challenging to law enforcement efforts and legislative agendas, but also undermines the very regime of prohibition of international trade in illicit drugs. It does so legally and culturally.

During the rise of this global regime in the past few decades, intersecting with neoliberal globalization, have resulted in unprecedented harmonization in anti-drug laws. However, from a legal standpoint focusing on North-America, Canada has become known as a Bitcoin-friendly jurisdiction with positive approaches taken by the authorities.<sup>42</sup> The regulatory and legislative landscape in the US is different and more complicated. In the latest US Senate hearing on virtual currencies, the Senators confidently proclaimed, “existing federal laws, as well as law-enforcement, are capable of addressing the concerns relating to emerging digital assets, although developments are constantly being monitored in the areas of money laundering and other illicit uses.”<sup>43</sup> The US Federal regulations relying on the PATRIOT Act require digital assets service providers to be registered as a Money Service Business (MSB), which in turn bound Bitcoin providers and marketplaces to an array of obligations. Additionally, anti-money laundering laws require MSBs to follow financial information reporting policies in order to comply with various requirements under the PATRIOT Act and Bank Secrecy Act. Correspondingly, they also may be subject to analogous requirements under similar state laws.<sup>44</sup>

However, this system of laws is grossly inadequate in engaging virtual currencies. The lack of clear legislative guidance exacerbates the ambiguous situation Bitcoins are in

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<sup>42</sup> The Canadian Press, "Bitcoin kiosks coming to five Canadian cities," CBC News, <http://www.cbc.ca/news/technology/bitcoin-kiosks-coming-to-five-canadian-cities-1.1699015>.

<sup>43</sup> Beyond Silk Road: Potential Risks, Threats, and Promises of Virtual Currencies.

<sup>44</sup> Claudia Callaway Joshua G. Berman , Jill E. Darrow, Evan L. Greebel, Gary W. Howell and Carolyn H. Jackson, "Bitcoin: current US regulatory developments", Lexology, <http://www.lexology.com/library/detail.aspx?g=e169b044-c499-46a1-a447-0f9b1450db23>.

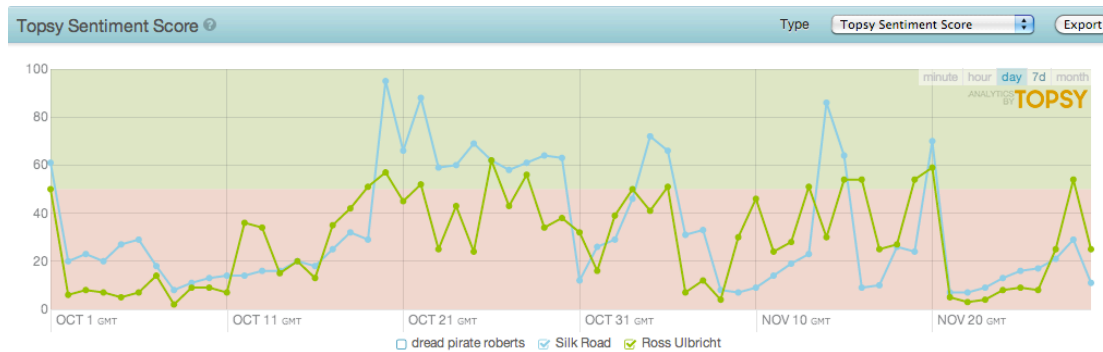
with the lack of legal classification. Bitcoins are not legally classified, but are vaguely categorized as virtual assets. Law enforcement cannot possibly be effective relying on aged legislation that belongs to the era when most large-scale transactions took place exclusively in banks. This also does not allow Bitcoin to fully realize its economic potential. The Silk Road's use of Bitcoin provides a legal challenge and in turn, challenges the global regime of prohibition of trade in illicit drugs.

Culturally, there is a striking lack of moral opprobrium against cybercrime and The Silk Road especially. This trend significantly affects the prohibition regime and the war on drugs. If The Silk Road is an example of a larger trend the black market for illicit drugs is going to take in the future, the already unpopular but heavily funded war on drugs will be even more difficult to favourably maintain. Social media can be of great help to follow this trend, in the absence of sophisticated social polling on this issue. Accordingly, I took two samples in confirming my hypothesis. First, the tweets that featured the key words "Silk Road" and "Ross Ulbricht" from October 1<sup>st</sup> when Ross Ulbricht was arrested by the FBI for 40 days. The second sample involved tweets with the key words "Miguel Treviño Morales" and "Drug Cartels" monitored for the 40-day period after July 15<sup>th</sup> 2013 when Mr. Morales, the leader of the infamous Mexican drug cartel Los Zetas was arrested.<sup>45</sup> Using Topsy Pro, I gathered negative and positive sentiments offered in those tweets to the subject and filtered out neutral tweets. Comparing the two we can see that the sentiments portrayed within the two samples differ greatly even though both men share charges such as drug trafficking, money laundering and soliciting murder. The sentiments towards The Silk Road and Mr. Ulbricht rose above neutrality in 21 points on the graph and were neutral on four occasions (Figure 1); meanwhile the twitter world maintained a completely negative view of Mr.

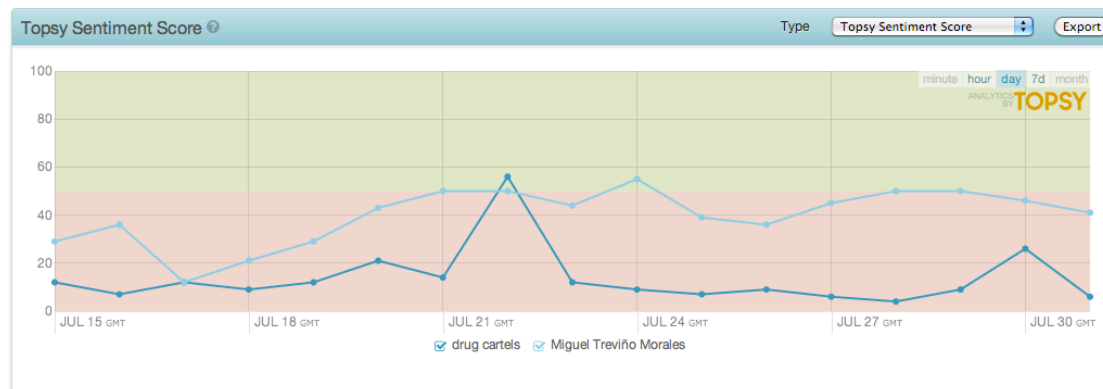
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<sup>45</sup> Associated Press in Mexico City, "Mexico captures Zetas leader Miguel Angel Treviño Morales, known as Z-40," The Guardian, <http://www.theguardian.com/world/2013/jul/16/mexico-drugs-trade>.

Morales, except on two occasions where the Topsy Sentiment scored barely a few points above neutrality (Figure 2).<sup>46</sup>



**Figure 1**



**Figure 2**

However, this difference brings up an important question: What accounts for this variance? One way to explain this phenomenon is to refer to the building blocks in the construction of the war on drugs. The demonization of the criminals has been a significant part of the law enforcement effort against the trade in illicit drugs since the onset. Jasbir Puar portrays an interesting resemblance between Foucault's monster figure and the racialised images used by the war on terrorism that I think is comparable to the image of

<sup>46</sup> Figures published with authorization given to the author.

criminals constructed by the war on drugs.<sup>47</sup> Demonstrably, this brand of cultural warfare against drugs simply does not work. This is especially true in case of The Silk Road. It is too technical, and far from our streets where any statistics of crime decidedly worry us. The stereotypical elements of a drug bust like a display of strength by the police showcasing the retrieved drugs and ammunition is missing. This is another way in which The Silk Road worries law enforcement.

Furthermore, a separate argument can be made about the characteristics of this regime that are macro-level permissive factors in the creation of The Silk Road, and other online illicit drugs black markets such as Atlantis. The war on drugs and the global regime of prohibition of international trade in illicit drugs has done very little to reduce the demand for drugs. Arguably, from the perspective of the market, the heavily restricted supply coupled with high demand and the opportunity for profit inevitably leads to the creation of black markets, such as The Silk Road. Where there are macro-level incentives and a suitable atmosphere, the augmentation of criminal behaviour such as the case at hand is inevitable.

## **Conclusion**

I have argued that even though law enforcement agencies such as the FBI may prefer to write off The Silk Road as just another cybercrime offshoot they have effectively dealt with, there are potentials within this latest move in transnational crime that greatly challenge law enforcement, legislators and the global prohibition regime on the international trade in illicit drugs. The Silk Road's presence in the evasive realm of Dark Web which I framed using Palan's theory of antisovereignty frames my broader argument.<sup>48</sup> Further, relying on the concept of nomadic capitalism, I have argued that The Silk Road and similar black markets

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<sup>47</sup> Amit Rai Jasbir Puar, "Monster, Terrorist, Fag: The War on Terrorism and the Production of Docile Patriots," *Social Text* No. 72 (Fall, 2002), no. 911-A Public Emergency?

Also, I'm referring to 'public service announcements' such as these:

<http://www.youtube.com/watch?v=RSIZQRi4M6c>

<sup>48</sup> Ronen Palan, "Crime and the global political economy," 35-62.



for illicit drugs have the potential to significantly attract capital as law enforcement continues to lack the ability effectively deal with them. The Silk Road's use of Bitcoin is another example of the technological intricacy that sets this subject apart. The momentum gained by Bitcoins as I undertook my research shows that it can revolutionize the financial system, but I predict that the criminogenic aspects of Bitcoin will not be tamed in the near future without a credible effort from the legislature.

Lastly, in the latter two sections of this paper I focused on the global prohibition regime on the international trade in illicit drugs. Naylor,<sup>49</sup> Madsen,<sup>50</sup> Alexander,<sup>51</sup> Moore<sup>52</sup> and various other scholars have argued that the supply-side efforts in the war on drugs are doomed to inevitably fail. Building on the foundation of this literature, I have argued that The Silk Road's unique characteristics prevent effective demand-focused efforts thus enticing law enforcement to commit to tested-and-failed methods. I have also pointed to the ways in which The Silk Road challenges this regime legally and culturally. I have relied on an analysis of the regulations currently affecting Bitcoin and the attitudes of the legislator towards this concept. To portray the cultural elements of the response to The Silk Road, I have surveyed attitudes within twitter. I admit that this method may have its own limitations.<sup>53</sup> Users of twitter tend to be more liberal in certain aspects and more conservative in others. However, I believe that we can get a suitable cross-section of the reaction to arrests of two alleged criminals from different organized crime strands that were involved in ultimately similar activities. This controlled testing of the hypothesis confirmed my argument.

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<sup>49</sup> Robin Thomas Naylor, *Wages of crime: Black markets, illegal finance, and the underworld economy* (Cornell University Press, 2004). 2-11.

<sup>50</sup> Madsen, *Transnational organized crime*, 34.

<sup>51</sup> Michelle Alexander, "America's new Jim Crow system," *The US war on drugs created a whole new generation of the dispossessed, with millions of black people denied their rights*(2011), <http://www.guardian.co.uk/commentisfree/2011/mar/31/america-jim-crow-race-war-on-drugs>.

<sup>52</sup> Mark H Moore, "Supply reduction and drug law enforcement," *Crime and Justice* (1990).

<sup>53</sup> Amy Mitchell and Paul Hitlin, "Twitter reaction to events often at odds with overall public opinion," *Pew Research Center* 4(2013).

Hence, I believe that whether or not The Silk Road will put up a fight, it has started a trend that is bigger than Mr. Ulbricht. The future of a presence of an online black market for drugs and the viability of Bitcoin as it finds its place within the doubtful financial system, are going to depend on the future developments.

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