

THE HARD QUESTIONS

Getting a fix

As everyone knows, America's eternal war on drugs has inflicted collateral damage of immense proportions on black males. Over the last decade, the prison population has exploded with mostly young, non-white, inner-city males caught in the drug trade. In 1992 alone, two-thirds of those admitted to state prisons for drug offenses were black. And the number of black males held in prisons, as a proportion of the adult population, nearly doubled from 3.5 percent in 1985 to 6.7 percent in 1994. (The corresponding number for whites in 1994 was only 0.9 percent.)

Predictably, some academics and civil rights advocates have decried this trend. In his book *Malign Neglect: Race, Crime and Punishment in America*, Michael Tonry, a criminologist at the University of Minnesota, offers a wealth of data to show that the war on drugs caused arrests to rise more rapidly among blacks than whites during the late 1980s. He concludes that the national drug policy is immoral, precisely because of its racially disparate effects. Similarly, some civil libertarians have denounced the mandatory minimum sentences for federal drug offenses because they single out for harsher treatment those (mostly blacks) who traffic in crack cocaine. Possessing as little as five grams (about \$500 worth) of crack carries a five-year mandatory minimum sentence, while it takes 100 times as much cocaine to trigger the same automatic sentence.

Although superficially appealing, these charges of racial discrimination are ultimately unpersuasive. There is nothing necessarily pernicious about a war on drugs that hits inner-city traffickers hardest. If one is to fight the drug trade, one must go where the action is, and the action is often in black neighborhoods. Economic logic and accidents of history conspire to make low-income, inner-city neighborhoods ideal locations for drug peddlers. A clandestine commerce can flourish with relative impunity in disorganized communities with abandoned property, a substantial population of transients and easy access to major highways. (Street prostitution is also rampant in these areas and, like drug peddling, quite rare in upper-

middle-class suburbs.) And because buyers and sellers cannot openly advertise their locations, they must make an educated guess. So once an area acquires the reputation of being a good place to "score," it is likely to remain one.

This makes life hell for law-abiding folks, largely poor and black, who are struggling to raise their children in these neighborhoods. Which is why, as Randall Kennedy of Harvard Law School argues in his book *Race, Crime and the Law*, a policy targeted at retail drug traffickers can, despite its impact on black incarceration rates, also provide disproportionate benefits to black communities. Nothing is more certain to signal that the forces of lawlessness and disorder have won out over those of decency and security than the flourishing of an open-air drug market on neighborhood streets.

There is also nothing necessarily wrong with the more severe treatment of crack in sentencing laws. Crack cocaine is a highly addictive, severely debilitating drug that has wreaked havoc on inner-city communities across the country. The crack trade, a lucrative and deadly business in ghetto America, brings with it an alarming level of violence, with profoundly deleterious consequences for residents of these communities.

No, the simple fact of a racially disparate incidence of punishment should not foreclose an otherwise effective law enforcement strategy that is color-blind on its face. But is the current strategy really working? This is a critical question because, while disparate racial results are not disqualifying *per se*, they are nevertheless undesirable. Locking up an ever larger proportion of the adult male residents of inner-city neighborhoods constitutes a cost to society, and this cost must be placed alongside the benefits of a policy to determine its desirability.

Accumulating evidence demonstrates that the punitive anti-drug crusade of the last decade is, in fact, not producing benefits commensurate with its substantial costs. Indeed, the price of illegal drugs is falling, not rising—and drugs are still available on street corners and in alleyways. Moreover, despite the disparate treatment of crack in federal and some state laws (California's, for example), recent research by Jonathan Caulkins of Carnegie Mellon University has shown that the street prices of crack and powder cocaine are about the same. If so, then the strenuous efforts to target trafficking in crack

have had little effect on its supply and thus overall distribution.

Given such evidence, Peter Reuter, a leading drug policy analyst at the University of Maryland's School of Public Affairs, recently argued that our drug policy is now too punitive. In a speech delivered in February to the National Institute of Justice titled "Can We Make Prohibition Work Better?," Reuter contended that we could "mitigate the harshness of our [drug] policies with little risk of seeing an expansion of drug use and related problems." If, indeed, we can do so, there is a strong argument that we should. Such a mitigation would allow federal and state judges the flexibility to give shorter sentences to retail drug sellers; police to de-emphasize the arrest of users for simple possession; and states to shift at least some resources from punishment into prevention and treatment. According to Reuter, of the \$30 billion now spent annually on drug control (up sharply from \$6 to \$7 billion in 1985), fully three-quarters is directed at apprehending

and punishing dealers and users, while only about one-sixth is going to treatment.

That these particulars read suspiciously like a political liberal's wish list does not make them wrong. Nor does the fact that inner-city drug traffickers are not choirboys mean that imprisoning them is an effective way to deal with the drug problem. The fear of appearing "soft" on the drug issue has had a deleterious effect on the quality of our public debate in this area. As UCLA drug policy expert Mark Kleiman has stressed, drug enforcement differs from other kinds of law enforcement in that "locking up a burglar ... does not materially change the opportunities for other burglars, while locking up a drug dealer leaves potential customers for new dealers."

The prostitution analogy is apt. Do we really want to pursue a policy—targeting street-level retail dealers for mandatory prison terms—that imposes great costs on a vulnerable part of society while accomplishing little in objective terms? Is this not too high a price to pay in order to provide politicians with a symbol of their righteous determination to "do something" about a problem which, at its root, lies in the consumption habits of the society, rather than in the criminality of its impoverished, urban youth?

GLENN C. LOURY



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