

than those that are asked in efforts to ferret out a willful and pervasive racial bias in a criminal justice system in which most officials and participants believe in racial equality and worry about the racial patterns they see every day.

3

Race and the War on Drugs

Three effects of the War on Drugs stand out. First, it was a failure. The street price of cocaine, the war's signature drug, should have risen if dealing were becoming riskier and drugs less available; prices fell. Massive arrests and street-sweep tactics in many cities, backed up by harsh mandatory prison sentences, should have cleared out the drug dealers and made drugs harder to find; they did not. Most analysts and many police officials believe that arrested street dealers are nearly always replaced by others willing to take the risks and that drug sales are merely moved to other locations. Finally, there is no evidence that crime control efforts lowered levels of drug use in the United States. Drug use was declining years before the war was declared, and the war can claim no credit for the continuation of preexisting trends. There are reasons to believe that mass media and public education initiatives reduced drug use, especially among school-age people, but that is a different matter.

Second, although the war accomplished few if any of its ostensible goals, it did so at great cost. The doubling of arrests in the 1980s, combined with harsher penalties, more than doubled police, jail, prosecution, and court case flows and costs associated with drugs.

The war's effects on prisons and correctional programs were greater. Drug-offense sentences are the single most important cause of the trebling of the prison population in the United States since 1980. In the federal prisons, for example, drug offenders constituted 22 percent of admissions in 1980, 39 percent in 1988, and 42 percent in 1990. In 1980, 25 percent (4,912) of federal prisoners were drug offenders; by 1991, 56 percent (30,754) were

drug offenders; and by 1992, 58 percent. Guarding, housing, feeding, and caring for all these prisoners cost a great deal. Typical estimates of the average annual cost of holding one prisoner range from \$20,000 to \$30,000. Typical estimates of the costs of building new prisons range, depending on climate and security level, from \$50,000 to \$200,000 per prisoner. Construction costs often are paid with borrowed money, to be repaid with interest in future years. Operating costs are paid from current revenues; the future burden will come from debt service and the need to continue year after year to pay to house drug offenders sentenced to ten, twenty, and thirty years in prison.

Third, as if ineffectiveness and immense, avoidable cost were not indictment enough, they pale before the most fundamental objection. The War on Drugs foreseeably and unnecessarily blighted the lives of hundreds of thousands of young disadvantaged black Americans and undermined decades of effort to improve the life chances of members of the urban black underclass. The war was fought largely from partisan political motives to show that the Bush and Reagan administrations were concerned about public safety, crime prevention, and the needs of victims (as if Democrats, or any responsible mainstream political figure, were not). The bodies counted in this war, as they lay in their prison beds, however, are even more disproportionately black than prisoners already were. War or no war, most people are saddened to learn that for many years 30 to 40 percent of those admitted to prison were black. The War on Drugs was a calculated effort foreordained to increase those percentages, and this is what happened.

This chapter presents the evidence on which the preceding observations are based and explains why on both ethical and policy grounds, because of its implications for black Americans, the War on Drugs should never have been launched. I first examine whether on substantive, as opposed to ideological, grounds there was any reason to start the War on Drugs. I then trace the effects of the drug wars and show that blacks particularly were ensnared. Although disadvantaged young people of all races and ethnicities have been affected by the drug wars, the greatest attention has been on Hispanics and blacks. Black Americans in particular have been caught, and because of the heavy burdens borne by the war's black victims, the emphasis of this chapter is on them. I consider

why so many young disadvantaged blacks were willing to risk injury, death, or prison in order to sell drugs and why policymakers should have known that and taken it into account in formulating policy. Finally, I show why the war's architects should be held accountable for what they have done to damage young black Americans.

Why the War Should Not Have Been Declared

The Reagan administration's declaration of a war on drugs resembles Argentina's declaration of war against Nazi Germany in March 1945. It was late and beside the point. Just as it was clear in 1945 that Germany was in military decline, so in 1987 and 1988 when the drug war was begun, it was clear that drug use was in decline and had been since the early 1980s.

There was no need in the late 1980s for a War on Drugs. Cases could be made for continuing support for efforts to target major importers, distributors, and traffickers, and for increasing support for drug education programs in school and for drug treatment for those who wanted it, but not for vastly more emphasis on law enforcement directed at users, user-dealers, and street-level trafficking. The ostensible goal of the drug war was to diminish drug abuse, and that goal, evidenced by a continuing decline in drug use, had been achieved before the drug war began. By all available measures of drug use in the general population, use of the major illicit substances, except cocaine, began to fall in the early 1980s, and the use of cocaine dropped from the mid-1980s onward.

By some disingenuous measures, the War on Drugs was bound to succeed, and President Bush made the disingenuous claims. Thus in December 1990, citing data on long-term drug use trends showing a 44 percent decline since 1985 in the number of people who used illegal drugs monthly, President Bush announced, "I am pleased to say that the news we have today suggests that our work is paying off, and that our national strategy is having an effect." The first drug czar and director of the White House Office on National Drug Control Policy, William Bennett, and Louis Sullivan, Secretary of Health and Human Services, made similar claims.

Because of the long-term decline in drug use, any comparison of levels of use in, say, 1985, before the war was launched, with levels of use in, say, 1989 and 1990, would appear to demonstrate that toughened drug laws and enforcement practices had deterred people from buying and using drugs and, accordingly, that the war had succeeded. This is a mistake commonly made when attempting to understand the effects of legal or policy changes. A simple comparison of conditions before and after the change will be misleading if there is a long-term trend of which both years are a part, in which case the change may have had nothing to do with events in the world. A homely example: A healthy ten-year-old child, if given cucumber sandwiches for lunch every day for a year, will be taller and heavier at year's end; a claim that the cucumbers caused the child to grow would be incorrect. The child might have grown more or less or in different ways on a different diet, but figuring that out requires more sensitive research designs than a simple before-and-after comparison. And so it is with drug use; year-to-year changes are meaningless except in the context of known long-term trends.

Figures 3-1 to 3-6, all based on surveys of large representative samples of the U.S. population conducted for or by the National Institute on Drug Abuse (NIDA), show steady downward trends in the use of dangerous substances over long periods for different age groups. All are based on surveys in which sample members are asked, in confidence, to answer questions about their use and frequency of use of different substances.

Figure 3-1 provides data for the period 1975 to 1991 from a series of annual surveys on drug use by high school seniors. The samples are huge, ranging from 15,000 to 18,000 students per year. Figure 3-1 shows the percentages admitting to any use of marijuana, cocaine (any form), heroin, or alcohol during the preceding twelve months. "Any use" includes just once, so this is the broadest measure of use and includes casual one-time experimenters. For each substance, and reported use dropped. Reported heroin use was low at all times and fell throughout the period. The percentage reporting any marijuana use began at 40 percent in 1975, climbed to 51 percent in 1979, and fell continuously thereafter to 24 percent in 1991. For cocaine, the pattern is similar but with a later peak and a steeper drop. Fewer than 6 percent reported use in 1975, followed by a rise to 12 percent

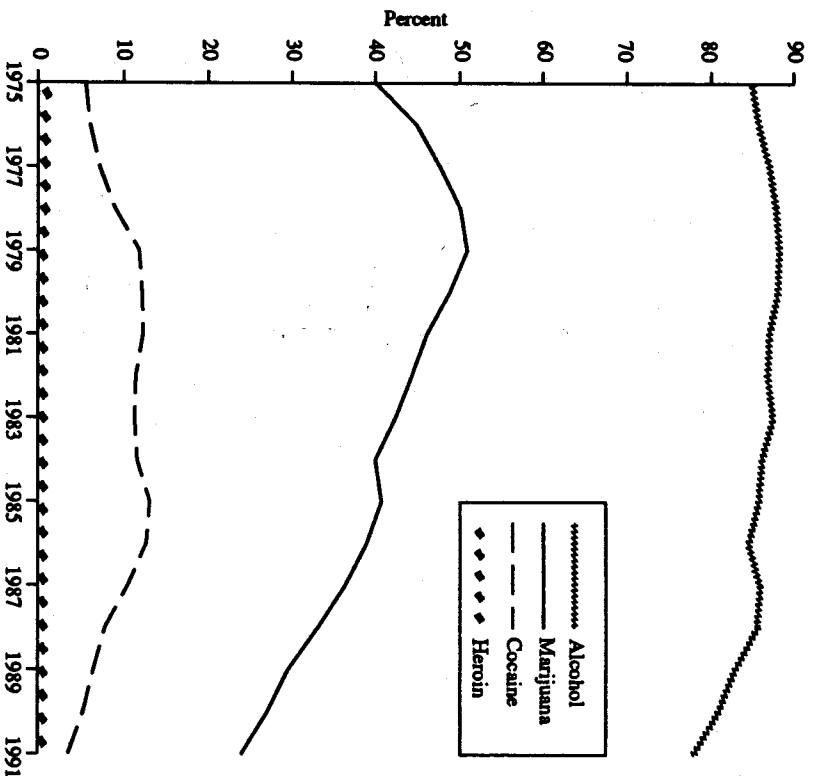


Figure 3-1. Reported Drug Use Within Last 12 Months Among U.S. High School Seniors, 1975-91
 Sources: Bureau of Justice Statistics, *Sourcebook of Criminal Justice Statistics—1987* (Washington, D.C.: U.S. Department of Justice, 1988), Table 3.66; Bureau of Justice Statistics, *Sourcebook of Criminal Justice Statistics—1991* (Washington, D.C.: U.S. Department of Justice, 1992), Table 3.92.

in 1979; reported levels of use fluctuated around 12 percent, reaching a 13 percent peak in 1985 after which there was a precipitate drop to 3.5 percent in 1991. Even alcohol followed the same pattern, rising to a modern high of reported use in 1979 and falling steadily thereafter to a level in 1991 below the starting point. It is possible, of course, that casual use of drugs might have been falling while regular use by smaller numbers of people was increas-

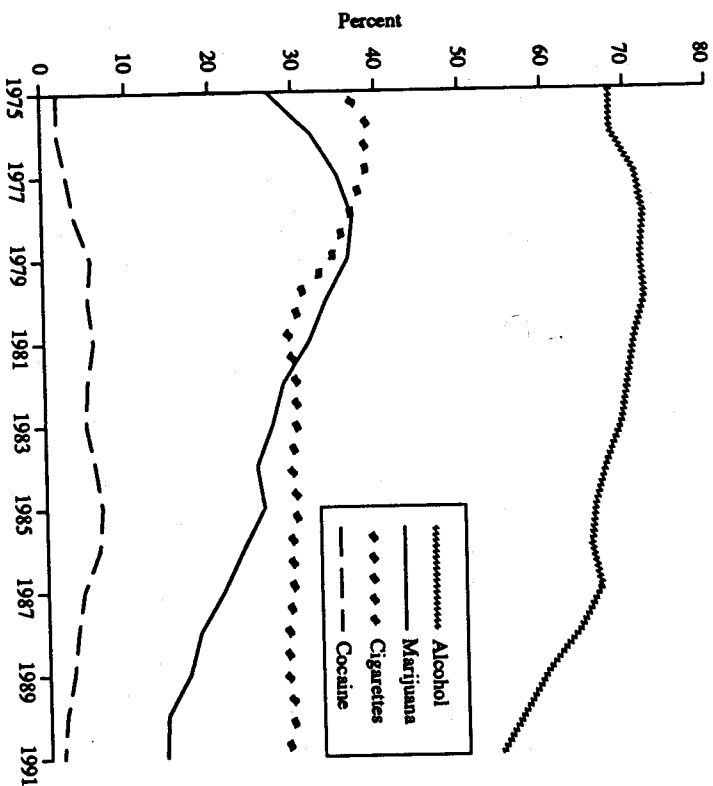


Figure 3-2. Reported Drug Use Within Last 30 Days Among U.S. High School Seniors, 1975-91

Sources: Bureau of Justice Statistics, *Sourcebook of Criminal Justice Statistics—1987* (Washington, D.C.: U.S. Department of Justice, 1991), Table 3.67; Bureau of Justice Statistics, *Sourcebook of Criminal Justice Statistics—1991* (Washington, D.C.: U.S. Department of Justice, 1992), Table 3.93.

ing. If so, the decline in drug use shown in Figure 3-1 might be misleading. Figure 3-2 shows that the number of frequent users was also declining. Figure 3-2 shows data from the same source on the percentages of high school seniors reporting use of marijuana, cocaine, alcohol, or cigarettes within the preceding thirty days. Heroin is omitted because the use levels are so low (since 1976, usually two-tenths of 1 percent), and cigarettes are included because they confirm the general trend toward decreasing use of addictive substances by young people.

Those reporting drug use in the thirty-day period covered in

Figure 3-2 include some one- or few-time experimenters who just happened to conduct their experiments immediately before the survey was conducted. Most reporting such contemporaneous use are likely to be occasional or regular users. The ratio of experimental to regular users may change over time, with experimentation falling but steady users persisting. If that were true, the trend lines in Figure 3-2 should be very different from those in Figure 3-1. They are not. It thus appears that both experimental and regular use were falling.

The trend lines in Figure 3-2 closely resemble those in Figure 3-1. The cigarette pattern is striking because it anticipates those for alcohol and illicit drugs. The percentage reporting cigarette use within the preceding thirty days climbed to 39 percent in 1976, fell steeply to 30 percent, around which it fluctuated from 1980 to 1985, thereafter dropping to 28 percent in 1991.

To show that the patterns in the high school surveys are real and believable, Figures 3-3, 3-4, 3-5, and 3-6, encumbered with less textual summary and description, present data from the other major long-term surveys of Americans' drug use. Figure 3-3 shows trends in self-reported use within the preceding thirty days of marijuana, cocaine, alcohol, and cigarettes by full-time American college students one to four years beyond high school. Heroin is omitted because the reported use levels are generally below one-tenth of 1 percent.

Because of self-selection and economic and social background considerations that lead only some young people to college, the college survey represents a different and less heterogeneous population than the high school surveys. Nonetheless, the trends are the same as those for high school students. Marijuana and alcohol use fell steadily from the early 1980s onward: cigarette use declined somewhat; and the drop in cocaine use came later (in 1986) for college than for high school students, but it was steeper.

Figures 3-4 to 3-6, based on the National Household Surveys on Drug Abuse, summarize data on drug use among the American household population aged twelve and over. The surveys have been conducted periodically since 1972 for the National Institute on Drug Abuse and the National Institute on Alcohol Abuse and Alcoholism. The 1990 survey, the tenth conducted, included 9,259 interviews. Figures 3-4, 3-5, and 3-6 show the percentages of survey respon-

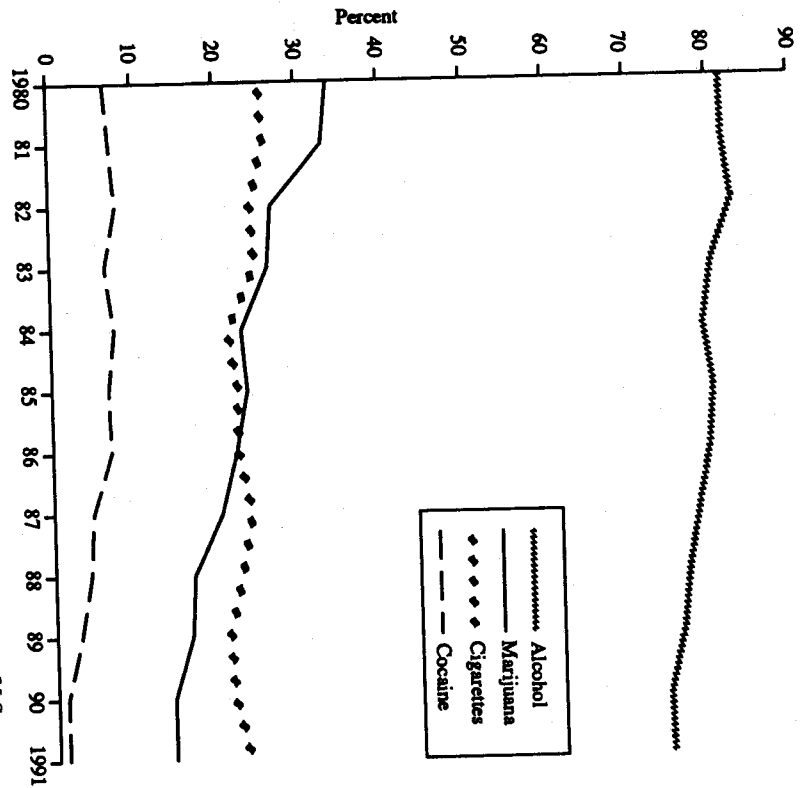


Figure 3-3. Reported Drug Use Within Last 30 Days Among U.S. College Students, 1980-91
 Source: Bureau of Justice Statistics, *Sourcebook of Criminal Justice Statistics—1991* (Washington, D.C.: U.S. Department of Justice, 1992), Table 3.95.

Students reporting use during the preceding year of marijuana, cocaine, and alcohol. Data are presented separately for respondents 12 to 17 years old, those 18 to 25, and those over 25. For the two younger age groups, the trends for each substance resemble those from the high school and college-student surveys. Only among the oldest age group, those over 25, are the patterns different. Most initiation of drug use occurs in the teenage years or the early twenties. People over 25 who report drug use are likely to be committed users, and for both marijuana (Figure 3-4) and cocaine

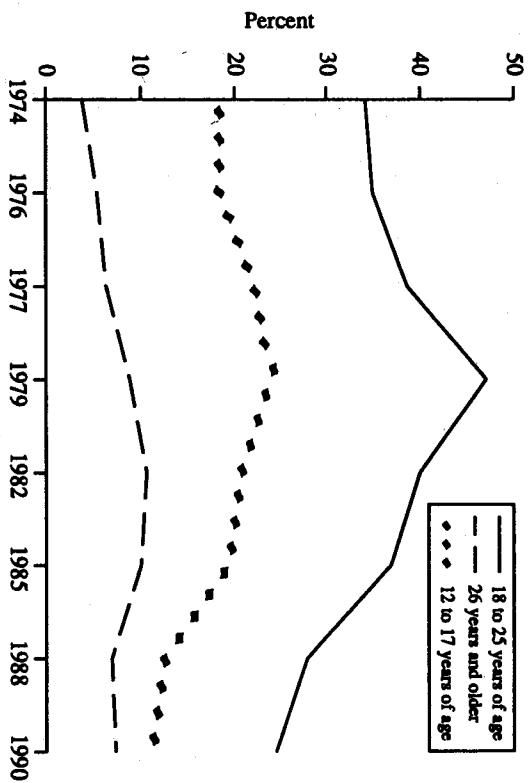


Figure 3-4. Estimated Prevalence of U.S. Marijuana Use by Age Group Within Last 12 Months, Selected Years, 1974-90
 Source: Bureau of Justice Statistics, *Sourcebook of Criminal Justice Statistics—1991* (Washington, D.C.: U.S. Department of Justice, 1992), Table 3.101.

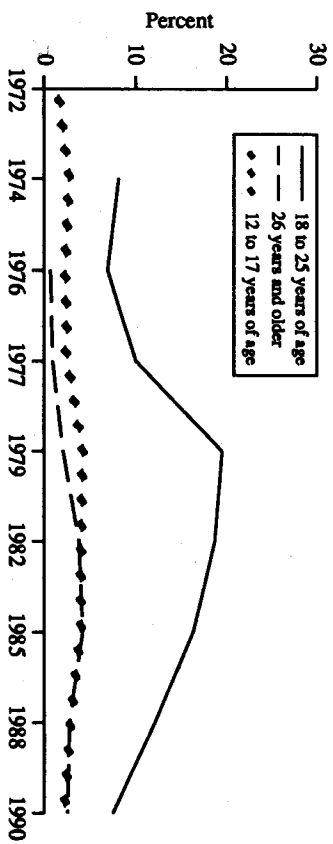


Figure 3-5. Estimated Prevalence of U.S. Cocaine Use by Age Group Within Last 12 Months, Selected Years, 1972-90
 Source: Bureau of Justice Statistics, *Sourcebook of Criminal Justice Statistics—1991* (Washington, D.C.: U.S. Department of Justice, 1992), Table 3.101.

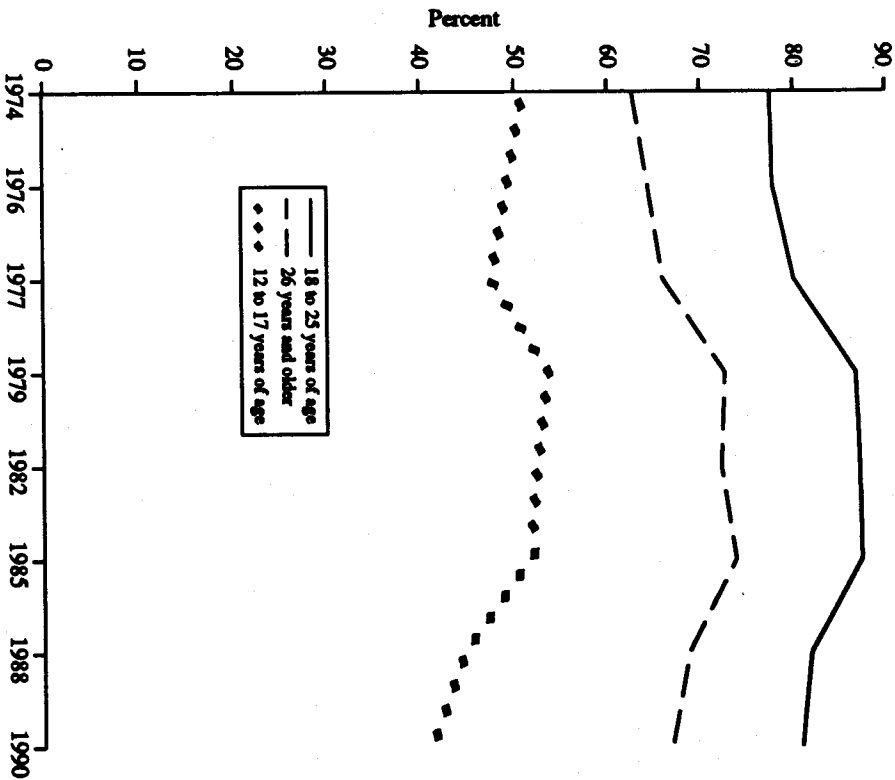


Figure 3-6. Estimated Prevalence of U.S. Alcohol Use by Age Group Within Last 12 Months, Selected Years, 1974-90
 Source: Bureau of Justice Statistics, *Sourcebook of Criminal Justice Statistics—1991* (Washington, D.C.: U.S. Department of Justice, 1992), Table 3.101.

(Figure 3-5) the curves were essentially flat during the 1980s. For the younger groups, however, as in the high school and college surveys, marijuana use peaked in the late 1970s and fell sharply thereafter. For 18 to 25 year olds, cocaine use peaked around 1979 and declined thereafter. Finally, Figure 3-6 shows, for comparison

purposes, that self-reported use of alcohol, a licit drug (except for underage drinkers) peaked in the 1980s for each age group and fell sharply after the mid-1980s.

Something was changing American attitudes toward drugs in the 1970s and 1980s, long before the politics of crime control produced a state of war. We can only speculate why that was happening. It is too soon for social histories to be written, and so explanations inevitably fall into the realm of pop sociology. The cigarette and alcohol trends are important because they signal a broadly based and widely shared change in American attitudes toward the ingestion of dangerous or unhealthy substances that can have little to do with the deterrent effects of law enforcement strategies or criminal sanctions. If NIDA had surveyed Americans on their use of caffeinated coffee since the 1970s, the use trends would resemble those for cigarettes and alcohol. The Department of Agriculture does measure food consumption per capita over time. Coffee consumption in the United States fell by a fifth between 1970 and 1991, from 33.4 gallons per person to 26.8, and the consumption of most fatty and high cholesterol foods fell sharply, including beef (from 79.6 pounds per capita in 1970 to 72.1 pounds in 1980 and to 63.1 pounds in 1991), whole milk (214 pounds per person in 1970, 142 in 1980, and 85 in 1990), and lard (4.6 pounds per person in 1970, 1.7 in 1991). No doubt for a variety of reasons—a reaction to the hedonism of the 1970s, the growing concern for personal health and fitness, a resurgence of social puritanism—Americans in the late 1970s became less enamored of drugs of most sorts and less inclined to use them. Only cocaine followed a somewhat different trajectory, with its use peaking later (but still before the declaration of war) and then falling more steeply.

By September 1989 when the Office of National Drug Control Policy issued its first National Drug Control Strategy, it was well known among public officials and drug policy scholars that drug use was in steep decline. Although specialized statistical reports like those published by the National Institute on Drug Abuse are seldom seen or read by lay people or journalists, they are well known among professionals. Only the willfully blind could have failed to know that no war was needed.

Something else was known about American drug policy that should have made government officials especially hesitant to start

a war. Well-documented historical experience shows that policymakers overreact in formulating and executing antidrug policies at times when social mores are becoming less accepting of drug use and their use is falling. David Musto, the leading historian of American drug policies, notes that

in the decline phase of drug use . . . we tend to have an overkill, that is to say people become so righteous and so zealous that we can have excesses in the name of fighting drugs. There is very little opposition to draconian policies because no one wants to stand up for using drugs.

Musto has described a cyclical pattern of American tolerance and intolerance of alcohol and drugs. At least three times since the beginning of the nineteenth century, the United States has moved from periods of widespread, tolerated, even approved recreational use of alcohol and drugs to puritanical periods of uncompromising prohibition. The first period of intolerance began in the 1820s and culminated in the prohibition of alcohol in a dozen states by the 1850s. The temperance movement of the late nineteenth century led to national Prohibition; more generalized intolerance of drug use and users produced the first major federal narcotics legislation, the Harrison Act of 1914, and the first federal marijuana law, the Marijuana Tax Act of 1937. The contemporary period of intolerance began around 1970, a transition year when the U.S. Congress repealed most mandatory sentencing laws, many concerned with drug crimes, because they were too harsh, too rigid, and as a result were too often evaded by judges and lawyers uncomfortable imposing what they saw as unjust sentences. Also by 1970, however, the Nixon administration had declared its war on drugs. Within a few years, New York was widely portrayed as suffering a heroin epidemic, which was followed in the 1980s by successive cocaine and crack epidemics in various parts of the country.

Public tolerance of drug use has fallen. Mandatory penalties for drug crimes have proliferated and are now the harshest in the nation's history: Mandatory prison terms of ten, twenty, and thirty years and life without possibility of parole now face many drug traffickers, especially in the federal system and often in cases in which only tiny amounts are involved. In 1991, in *Harmelin v. Michigan*, 111 S. Ct. 2680, the Supreme Court upheld the constitu-

tionality of life sentences without possibility of parole for drug traffickers. Drug testing of an extent and intrusiveness that would have been unthinkable twenty years ago is now commonplace.

The important thing is not the details of drug policy history, for which readers should consult the several good histories available, but the idea of cycles and movements between them. According to Musto, live-and-let-live attitudes prevail in periods of tolerance, like the 1890s and 1960s. In the late nineteenth century, for example, cocaine and opium (and their derivatives) were widely used in patent medicines; most addicts were conventional, law-abiding people, predominantly women; and cocaine was widely seen as a harmless recreational drug. In the 1960s, marijuana was widely and openly used; it and many hallucinogens were regarded by many as recreational drugs that were less harmful than alcohol.

During such periods of relative tolerance, traditional American notions of individualism and personal autonomy allow individuals to make their own choices about drug use; drug use is widely seen as only mildly deviant or not deviant at all; and people feel able to argue on the merits for the benefits and pleasures of drug use, for individuals' moral rights to make those choices. In periods of intolerance, drug use is widely seen as deviant, and few people feel comfortable risking moral disapproval or stigmatization by arguing in favor of drug use or tolerance of drug users.

The most intrusive laws and the cruelest penalties tend to be enacted *after* intolerance has reached its peak and when drug use is already falling. That is when self-righteousness is most uncompromising and voices in favor of tolerance are most muted. People with reservations, particularly elected officials, are reluctant to speak out for fear of being disparaged as "soft on drugs." And that is where the danger lies.

We all know this from personal experience. There are times when we are overwrought and our better judgment tells us that we are likely to act rashly or unfairly. Anger and emotion sometimes result in angry words that are later regretted or outraged letters that, our cooler self knows, should be put aside and reread tomorrow. When tomorrow comes, our cooler selves often win out and no letter, or a different one, is sent. Similarly, parents know that their own anger or tiredness or frustration can lead to overreaction to their children's behavior; we know we should listen to our

doppelgänger's warning to get hold of ourselves and not to take out our frustrations on our children. When we are angry and vindictive, we tend to overreact. In private life we try to restrain these impulses. In public life, another doppelgänger is talking, but policymakers too seldom listen.

Musto has described the dynamic that characterizes a period of declining tolerance:

Soon the trend reverses; drug use starts to decline faster and faster. Public opinion turns against drugs and their acceptability begins to evaporate. Gradually, drug use becomes associated, truthfully or not, with the lower ranks of society, and often with racial and ethnic groups that are feared or despised by the middle class. Drugs begin to be seen as deviant and dangerous and become a potent symbol of evil.

The key words are "drug use becomes . . . associated with the lower ranks of society, and often with racial and ethnic groups that are feared or despised by the middle class." Throughout this century in periods of high intolerance of drug use, minority group stereotypes have been associated with deviant drug use. Early in this century, even though mainstream women were the modal category of opiate users, Chinese opium smokers and opium dens were among the images invoked by opponents of drug use and were part of the backdrop to the Harrison Act. In the 1920s, it was blacks and cocaine. In the 1930s, images of Mexicans and marijuana were prominent in the antimarijuana movements that culminated in the Marijuana Tax Act of 1937 and in many state laws prohibiting marijuana use. In the antidrug hysteria of the 1980s, crack cocaine, the emblematic drug of the latest "war," is associated in public imagery with disadvantaged minority residents of the inner cities.

Given what we know about past periods of intolerance of drug use and their tendencies to scapegoat minority groups, and that disadvantaged urban blacks are the archetypal users of crack cocaine—and therefore are the principal possessors, sellers, and low-level distributors—anyone who knew the history of American drug policy could have foreseen that this war on drugs would target and mostly engage young disadvantaged members of minority groups as the enemy. And it has.

A policy that foreseeably would damage many young blacks and

Hispanics was bad enough, but this one was worse than it appeared, because the damage to minority-group members would be inflicted primarily for the benefit of the great mass of, mostly white, nondisadvantaged Americans. Explaining why requires some discussion of how laws influence behavior and a look back at our knowledge from NIDA surveys of drug use patterns since 1975.

Politicians proposing new, tougher laws tend to argue that longer sentences will deter or incapacitate prospective offenders. As noted in Chapter 1, research evidence on the deterrent and incapacitative effects of penalties is ambiguous and inconclusive at best, but for many kinds of crimes there is no basis for believing that altering penalties will significantly affect behavior. This is especially true of many drug crimes. Falling cocaine prices and the common experience that arrested dealers are replaced on the streets within days suggest that traditional law enforcement strategies are an ineffective way to diminish drug use.

There is, however, a broader way to think about how criminal laws operate that goes back at least to Emile Durkheim, one of the nineteenth-century pioneers of modern sociology. Durkheim argued that laws operate in diffuse ways to define and reinforce social norms. The criminal laws define the outer limits of acceptable behavior. These limits change over time and as different groups holding different values achieve greater or lesser influence. In thinking about the effects of criminal laws, we should therefore look not simply to their direct short-term effects but also to what modern philosophers like the Norwegian Johannes Andenaes call their moral-educative effects. The announcement, application, and enforcement of laws have dramaturgical properties that are part of the process by which people's values and beliefs are shaped and sustained. Watching or knowing the processes by which wrongdoers are apprehended and tried and punished helps bring home the inappropriateness of their behavior. Social learning occurs in part by example. Most people abstain from crime and drug use not because of the immediate threat of penalties but because they are socialized to believe the behaviors are wrong; they are not the kind of people who are tempted (or tempted enough) to do such things. Thus, at least in part, criminal law shapes behavior not only through the short-term effects of legal threats but also dramaturgically.

cally by helping reinforce values and norms that make people less likely to commit crimes.

The hypothesis that law affects behavior indirectly no doubt is right, although at best it is only a partial explanation of why people obey laws. However, it has the problem that it is amoral. If laws exist to underscore norms concerning the boundaries of legitimate behavior, legitimacy and hence criminality depend on what groups' values are ascendent. In Nazi Germany, for example, Goebbels might have argued that laws forbidding political dissent and authorizing the denial of Jews' legal and human rights should be vigorously enforced, not only to achieve short-term instrumental objectives, but also to help shape German mass public opinion to support the policies and credos of National Socialism.

Marxists argue that the class interests of those who control capital dominate government and the laws that governments pronounce and so laws are biased in favor of the wealthy and their values. Hence, Anatole France's aphorism that the law in its majestic equality forbids the rich as well as the poor to sleep under bridges, to beg in the streets, and to steal bread. Similarly, feminists believe that many laws reflect traditional male domination of society and government and express "patriarchal" values and male interests. Members of minority groups contend that many laws reflect traditional white domination of society and government. The contrasts between aggressive enforcement and strict penalties associated with violent and common-law property crimes, which blacks disproportionately commit, and alleged half-hearted enforcement and trifling penalties associated with white-collar financial and environmental crimes, which whites disproportionately commit, are often cited as evidence that criminal law is biased in favor of whites.

Laws, including criminal laws, are not disembodied, timeless statements of eternal values. In the United States it would be difficult to deny that politicians and officials respond to and represent the interests of the great mass of the population whose behavior is captured in the NIDA surveys. Thus it might be argued that the goal of the War on Drugs in an era when drug use is dropping is to reinforce values and norms that are influencing the decline and through dramas of crime and punishment to affirm repeatedly that drug use is immoral and wrong. This argument assumes, however,

that there are no competing values violated by using the law to shape norms. There are.

The problem with the rationale of the War on Drugs as an exercise in moral education is that it destroyed lives of young, principally minority people in order to reinforce existing norms of young, mostly majority people. Put crudely if explicitly, the lives of black and Hispanic ghetto kids were destroyed in order to reinforce white kids' norms against drug use. Reference back to the NIDA surveys will show why this is so.

At the same time that the NIDA surveys were showing broad-based declines in drug use throughout the 1980s, two other drug use indicators, drug-related admissions to hospital emergency rooms and urinalyses of felony defendants across the country, were implying stable or rising levels of drug use. Figure 3-7, based on a NIDA-sponsored reporting program called the Drug Abuse Warning Network (DAWN), shows the drugs involved in drug-related emergency room admissions to hospitals in metropolitan areas from 1980 to 1990. Contrary to the patterns shown in the NIDA surveys, the DAWN data show that mentions of cocaine, heroin, and marijuana increased slowly but steadily through mid-decade and rapidly thereafter.

The differences between the NIDA and DAWN data series may be less than initially appears. People admitted to hospital emergency wards are, after all, likely to be the heaviest abusers of drugs. Data from a number of sources suggest that three to five years typically separate the initiation of drug use from the onset of acute medical disorders. If that is so, the peak of cocaine emergency room admissions in 1988 followed by a drop in 1989 is consistent with peaks in self-reported use in 1985, with declines afterward.

An even greater contrast with the findings of the NIDA surveys is revealed by urinalyses of felony arrestees that have been conducted in American cities since 1987 as part of the U.S. Department of Justice's Drug Use Forecasting program (DUF). The DUF data show astonishingly high levels of drug use. Sixty, 70, and even 80 percent of male arrestees test positive in some cities. Table 3-1 shows the 1991 findings on positive urinalysis for male arrestees in twenty-three cities in 1991 for any drug, for cocaine, for marijuana, and for heroin. Positive test results for any drug ranged from a high in San Diego of 75 percent to a low in Omaha of 36

Table 3-1. Percentage of Male Arrestees Testing Positive by Urinalysis for Any Drug, Cocaine, Marijuana, and Heroin, 1991

City	Any Drug	Cocaine	Marijuana	Heroin
Atlanta, GA	63	57	12	3
Birmingham, AL	73	52	16	5
Chicago, IL	74	61	23	21
Cleveland, OH	56	48	12	3
Dallas, TX	56	43	19	4
Denver, CO	50	30	25	2
Detroit, MI	55	41	18	8
Fort Lauderdale, FL	61	44	28	1
Houston, TX	65	56	17	3
Indianapolis, IN	45	22	23	3
Kansas City, MO	53	37	18	1
Los Angeles, CA	62	44	19	10
Manhattan, NYC	73	62	18	14
Miami, FL	68	61	23	2
New Orleans, LA	59	50	16	4
Omaha, NE	36	14	26	2
Philadelphia, PA	74	62	18	11
Phoenix, AZ	42	20	22	5
Portland, OR	61	30	33	9
St. Louis, MO	59	48	16	6
San Antonio, TX	49	31	20	16
San Diego, CA	75	45	33	17
San Jose, CA	58	33	25	8
Washington, DC	59	49	11	10

Note: Drugs tested for include cocaine, opiates, PCP, marijuana, amphetamines, methadone, methaqualone, benzodiazepines, barbiturates, and propoxyphene.

Source: National Institute of Justice, *Drug Use Forecasting* (1991 annual report) (Washington, D.C.: U.S. Department of Justice, 1992).

percent, and for cocaine ranged downward from highs of 62 percent in Manhattan and Philadelphia.

The patterns shown by the 1991 DUF data are remarkably stable. Figure 3-8 shows the positive drug urinalysis test results for booked arrestees in Dallas, Kansas City, Manhattan, San Diego, Portland, Oregon, and Washington, D.C. These six cities were chosen because they represent all regions of the country. Although the proportions of positive test results among arrestees varied

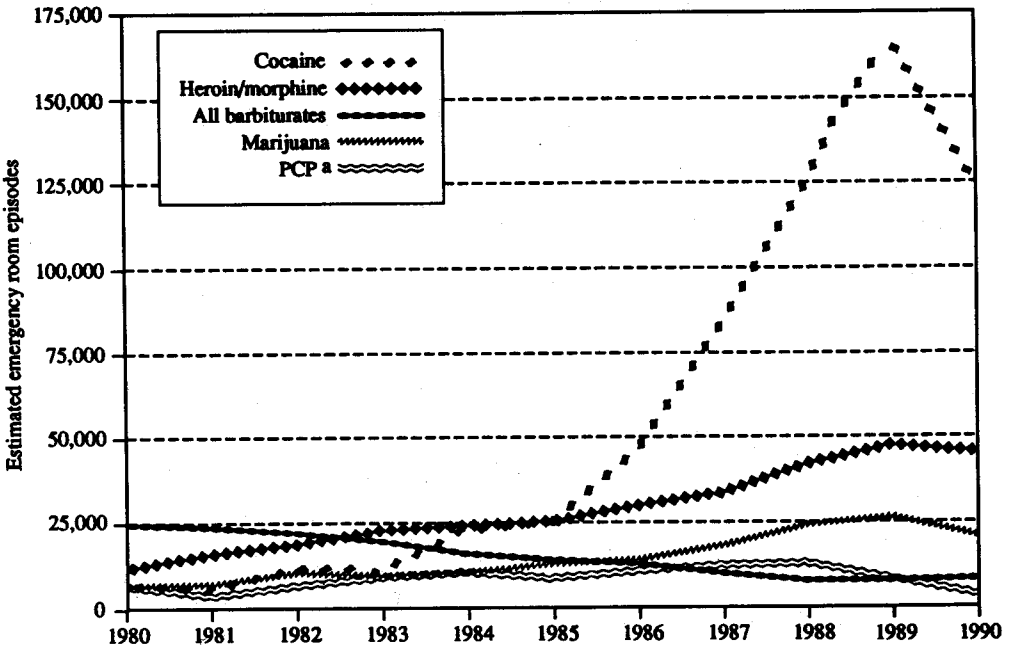


Figure 3-7. Drug-Related Hospital Emergency Room Admissions in Metropolitan Areas, 1980-90

* PCP and PCP combinations.

Source: Bureau of Justice Statistics, *Drugs, Crime, and the Justice System* (Washington, D.C.: U.S. Department of Justice, 1992), p. 11.

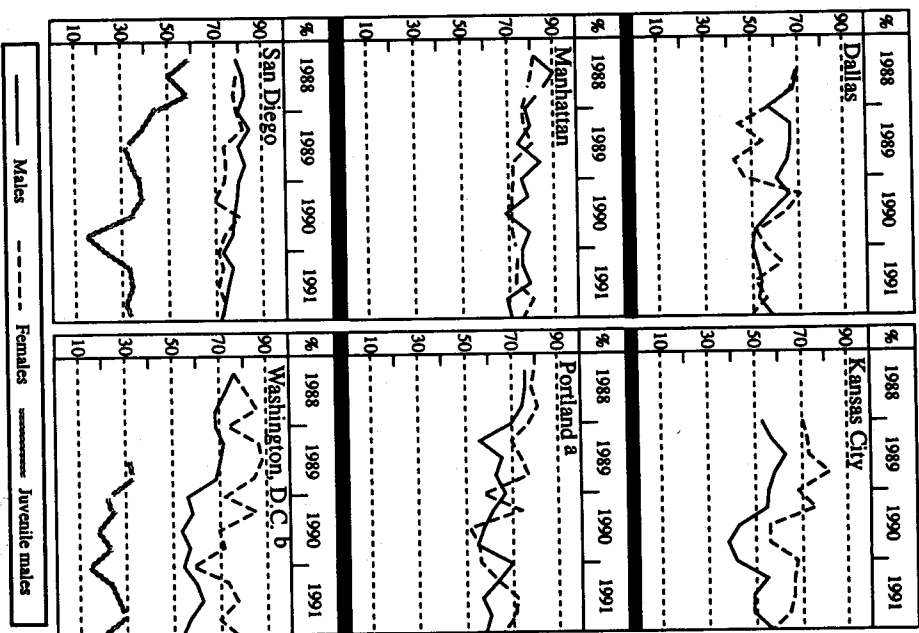


Figure 3-8. Trends in Drug Use Among Booked Arrestees

Notes: Positive by urinalysis. Drugs tested for include cocaine, opiates, PCP, marijuana, amphetamines, methadone, methaqualone, benzodiazepines, barbiturates, and propoxyphene. Gaps on graph represent periods when data were not collected.

^a Before 1991, site did not test for all 10 drugs listed.

^b 1988 Washington, D.C., data based on arrestees tested by D.C. Pretrial Services Agency. Drugs that the agency tests for include cocaine, opiates, PCP, amphetamines, and methadone. Data collected after 1988 are from the DUF program.

Source: National Institute of Justice, *Drug Use Forecasting (1991 annual report)* (Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, 1992).

among cities—around 80 percent in Manhattan, 60 percent in Portland and Dallas, and 50 percent in San Antonio—in any single city they fell slightly but were essentially stable.

Whatever their race, most felony defendants are poor, badly educated, un- or underemployed, and not part of a stable household. Disproportionately, they are black. In 1990, for example, 29 percent of all felony arrests were of blacks, as were 45 percent of persons arrested for violent index offenses and 58 percent of persons arrested for the three most serious crimes—murder, rape, and robbery. Among the arrestees included in the DUF program, similar patterns hold. Table 3-2 shows the positive test results, by race, for males in the twenty-three DUF cities in 1991 for any drug and for cocaine. In no city was the percentage of whites testing positive for “any drug” or cocaine higher than the black percentage (though they were equal or close in some sites) and whites in many cities tested higher than blacks for marijuana and heroin.

If such large percentages of arrestees in the DUF program test positive for drugs, and nearly half of those arrested for the most serious crimes in the United States are black, it must mean that drug use among some black groups has remained high. How can that be reconciled with the NIDA surveys? We now know the answer: It cannot.

It is now well understood that the NIDA surveys, although they are a reasonably reliable indicator of drug use by most Americans, are not based on a representative sample of the American population. Like the decennial population counts of the U.S. Bureau of the Census and the ongoing National Crime Victimization Survey conducted for the U.S. Department of Justice—both conceived as representative samples of the U.S. population—the NIDA surveys undercount young, mobile, inner-city people. This means that all three purportedly representative surveys miss large numbers of minority men and women living in American cities. The nature of the NIDA surveys probably exacerbates this problem. The high school surveys are of high school seniors, and so they miss those young people who leave school before their senior year. Even among registered students, truancy rates are high among disadvantaged students. Students absent when surveys are administered are disproportionately likely to include disadvantaged minority youth.

Table 3-2. Percentage of Male Arrestees, by Race, Testing Positive by Urinalysis for Any Drug or Cocaine

City	Any Drug					Cocaine				
	Black	White	Hispanic	Other	Black	White	Hispanic	Other		
Atlanta, GA	65	48	-	-	59	33	-	-		
Birmingham, AL	66	55	-	-	59	27	-	-		
Chicago, IL	75	72	72	-	63	60	53	-		
Cleveland, OH	61	41	44	-	56	21	38	-		
Dallas, TX	59	55	45	-	50	35	30	-		
Denver, CO	61	41	49	25	47	16	25	3		
Detroit, MI	56	49	-	-	41	40	-	-		
Fort Lauderdale, FL	71	53	41	-	58	32	26	-		
Houston, TX	77	59	41	-	70	49	29	-		
Indianapolis, IN	45	44	-	-	30	10	-	-		
Kansas City, MO	56	41	-	-	43	16	-	-		
Los Angeles, CA	77	65	51	20	63	27	38	10		
Manhattan, NYC	77	74	68	-	68	59	54	-		
Miami, FL	76	57	56	-	70	44	40	-		
New Orleans, LA	60	51	-	-	54	28	-	-		
Omaha, NE	44	32	31	18	23	6	10	0		
Philadelphia, PA	75	65	76	-	66	41	68	-		
Phoenix, AZ	53	43	37	19	41	17	15	8		
Portland, OR	66	58	73	44	46	18	64	19		
St. Louis, MO	60	54	-	-	53	26	-	-		
San Antonio, TX	55	48	48	-	45	18	30	-		
San Diego, CA	79	74	75	58	59	22	54	31		
San Jose, CA	72	59	56	37	54	25	33	19		
Washington, DC	60	49	-	-	51	26	-	-		

Notes: Drugs tested for include cocaine, opiates, PCP, marijuana, amphetamines, methadone, methaqualone, benzodiazepines, barbiturates, and propoxyphene.
- = fewer than 20 cases.

Source: National Institute of Justice, *Drug Use Forecasting* (1991 annual report) (Washington, D.C.: U.S. Department of Justice, 1992).

The broadest survey, the National Household Survey on Drug Abuse, carefully describes itself as an effort "to measure the prevalence of drug use among the American household population aged twelve and over." It therefore excludes the homeless, people with no permanent residence, and people institutionalized in jails and

prisons. The homeless include higher than normal percentages of drug users. Those without permanent residences or in jails or prisons are disproportionately young, poor, and members of minority groups.

The NIDA surveys and other indicators of drug use like DAWN and DUF are not inconsistent; they simply measure different things. In 1990, Senator Joseph Biden, Democratic chairman of the U.S. Senate Judiciary Committee, and William Bennett, then head of the White House Office of National Drug Control Policy, fought a drug policy duel using little-read government reports as weapons. Bennett, using NIDA data in the 1990 report of the Office of National Drug Control Policy, claimed that the Bush administration was winning its drug war. Biden riposted, citing DAWN and DUF data in a Senate Judiciary Committee report, and claimed that drug abuse was as bad as ever or worse.

Biden and Bennett both were right. Among the 95+ percent of the population who were reliably represented in the NIDA surveys, drug use in the 1980s was declining. Among disadvantaged young people in the inner cities, especially in minority areas of highly concentrated poverty, drug use was not declining, and this was captured by the DUF and DAWN data.

The drug use indicators measure different phenomena, not unlike the way that oceanographic instruments measure deep currents and surface perturbations. In the deep currents of evolving values and norms, Americans in the 1980s were moving away from use of drugs and other substances perceived as harmful, ranging from cholesterol and caffeine to quaalude and cocaine. At the surface, fierce storms were raging. By a variety of measures, including the concentration of urban poverty, labor force participation, illegitimate births, single-parent households, and general deterioration of neighborhoods, things were getting worse in the inner city in the late 1980s. Increased drug abuse and drug-related crimes were not unexpected correlates and consequences.

In the longer term, the deeper currents will likely affect most segments of the population. The social traumas affecting minority underclass areas buffered those attitudinal changes for a while, but eventually they should show up in less drug use. Already there are slight indications in the DUF urinalysis data (see Figure 3-8) of a downturn in positive drug tests among arrestees. Newspapers like

the *New York Times* and the *Washington Post* have recently begun carrying stories reporting that drug use is falling out of favor among disadvantaged members of minority groups. A May 31, 1993, *Washington Post* story, for example, was entitled "Crack Epidemic Appears to Wane; Seeing Drug's Destructiveness, Younger People Are Turning Away."

The white-shirted-and-suspendered officials of the Office of National Drug Control Policy understood the arcane intricacies of NIDA surveys, DUF, and DAWN better than anyone else in the United States. They knew that drug use was falling among the vast majority of the population. They knew that drug use was not declining among disadvantaged members of the urban underclass. They knew that the War on Drugs would be fought mainly in the minority areas of American cities and that those arrested and imprisoned would disproportionately be young blacks and Hispanics. Senator Daniel Patrick Moynihan, for example, in a 1993 article in the *American Scholar*, made the same point: "It is essential that we understand that by choosing prohibition [of drugs] we are choosing to have an intense crime problem concentrated among minorities." If the criminal law's mens rea equivalence between purpose and knowledge were applied to the decision to launch the war, knowing its likely effects on black Americans, the indictments would be unanswerable: The war's planners knew exactly what they were doing.

The Foreseeable Disparate Impact on Blacks

The crucial question is whether the architects of the War on Drugs should be held morally accountable for the havoc they have wrought among disadvantaged members of minority groups. The answer is that they should, and this section explains why. Three sets of issues arise. First, were the disparate impacts on black Americans foreseeable? The only possible answer, as the data presented in the following sections demonstrate beyond peradventure of doubt, is yes, they knew what they were doing. Second, putting aside its disparate impact implications, were there valid grounds for believing that the war's prohibitionistic approach would diminish drug trafficking and drug use? Third, is

there any arguable basis for justifying the war's foreseeable effects on black Americans? In particular, what should be made of the standard defense of the war's racial effects—almost a confession in avoidance—that most crime is intraracial and that the war's strategies were devised not to damage blacks but to protect black victims and communities? The answers to these questions are that there were no valid bases for believing that the war would accomplish its ostensible objectives, that the claim to protect black victims was disingenuous, and that there is no arguable basis for justifying the war's malign neglect of its implications for black Americans.

Urban black Americans have borne the brunt of the War on Drugs. They have been arrested, prosecuted, convicted, and imprisoned at increasing rates since the early 1980s, and grossly out of proportion to their numbers in the general population or among drug users. By every standard, the war has been harder on blacks than on whites; that this was predictable makes it no less regrettable.

Cocaine and, more recently, crack have been the drugs primarily targeted, and they, particularly crack, are notoriously used and distributed in the inner city. The political symbolism of cocaine has been high since the mid-1980s. The United States invaded Panama in part because Manuel Noriega was believed to be cooperating with Colombian drug lords. In the United States, the Medellín and Cali cartels were for many years among the best-known foreign business enterprises. Newspapers, television, and movies regularly portray trafficking in cocaine and crack as characteristic of inner-city minority neighborhoods. Any mildly informed person in the late 1980s knew that the major fronts in the drug wars were located in minority neighborhoods.

The institutional character of urban police departments led to a tactical focus on disadvantaged minority neighborhoods. For a variety of reasons it is easier to make arrests in socially disorganized neighborhoods, as contrasted with urban blue-collar and urban or suburban white-collar neighborhoods. First, more of the routine activities of life, including retail drug dealing, occur on the streets and alleys in poor neighborhoods. In working-class and middle-class neighborhoods, many activities, including drug deals, are likelier to occur indoors. This makes it much easier to find dealers

from whom to make an undercover buy in a disadvantaged urban neighborhood than elsewhere.

Second, it is easier for undercover narcotics officers to penetrate networks of friends and acquaintances in poor urban minority neighborhoods than in more stable and closely knit working-class and middle-class neighborhoods. The stranger buying drugs on the urban street corner or in an alley or overcoming local suspicions by hanging around for a few days and then buying drugs, is commonplace. The substantial increases in the numbers of black and Hispanic police officers in recent decades make undercover narcotics work in such neighborhoods easier. An undercover policeman of Irish or Polish descent in the 1960s was much less likely to be successful working undercover in a minority neighborhood than is a black policeman today in Chicago's Woodlawn or an Hispanic policeman in South-Central Los Angeles.

A stranger trying to buy drugs in the working-class Highland Park neighborhood around the Ford plant in St. Paul, Minnesota, or in Highland Park, Illinois, a middle-class suburb of Chicago, is likely to have much less success. Drugs are used and sold in both places, but rarely in the streets and not to strangers. Police undercover operations can succeed in such places but they take longer, cost more, and are less likely to succeed.

Both these differences between socially disorganized urban neighborhoods and other neighborhoods make extensive drug-law enforcement operations in the inner city more likely and, by police standards, more successful. Because urban drug dealing is often visible, individual citizens, the media, and elected officials more often pressure police to take action against drugs in poor urban neighborhoods than in other kinds of neighborhoods. Although wholesale drug arrests are seldom strategically successful in reducing drug use or trafficking, they briefly disrupt the drug markets and so win media and public approval.

There is another more powerful reason that the police focus their attention on the inner city. Both for individual officers and their departments, numbers of arrests made have long been a measure of productivity and effectiveness. If it takes more work and longer to make a single drug arrest in either Highland Park than in Woodlawn, the trade-off may be between two arrests per month of an officer's time in Highland Park and six arrests per month in

Woodlawn. From the perspectives of the individual officer's personnel record and the department's year-to-year statistical comparisons, arrests are fungible, and six arrests count for more than two.

Thus, a major reason that relatively more drug arrests are made in minority communities than elsewhere is that they are easier to make. Somewhat surprisingly, I am told by leading drug policy experts that there is no literature that confirms or contradicts this analysis or that considers why police target drug-law enforcement on minority communities. There are ethnographic and economic literatures on urban drug markets, and there are police and policy literatures on the tactics of street-level law enforcement and undercover narcotics work. The ethnographic literature documents the porousness of urban drug markets, and it and the economic literature explain why arrested dealers are nearly always quickly replaced by successors willing to accept the risks, but neither sheds light on police tactics. The police and policy literatures explain how and why narcotics enforcement operates but shed no light on why the emphasis is so much more often on the Woodlawns than on the Highland Parks.

Experienced police officials and prosecutors confirm my analysis. Former Kansas City prosecutor Albert Riederer, for example, is one person who offered this analysis to me. The police chief in Charlottesville, Virginia, justifying police targeting of casual drug dealing in University of Virginia fraternities, observed that "local civil rights advocates had a good point when they argued that anti-drug efforts were directed mainly toward the poor and members of minorities." In a 1993 article on drug policy in *Criminology*, Alfred Blumstein offers a similar analysis and, because of the absence of a literature, cites "personal communication with several individuals involved in drug-related police work."

No matter why it happens, the police emphasis on disorganized minority neighborhoods produces racial proportions in arrests that do not mirror racial proportions in drug use. Figure 3-9 shows the percentages of blacks and whites among drug arrestees reported in the FBI's *Uniform Crime Reports* for the years 1976 to 1992. The black percentage climbed steadily throughout the period and by two-fifths—from 30 to 42 percent—between 1985 and 1989. Since the absolute number of arrests was also rising, the number of arrests of blacks grew even faster. As Table 3-3 shows, between

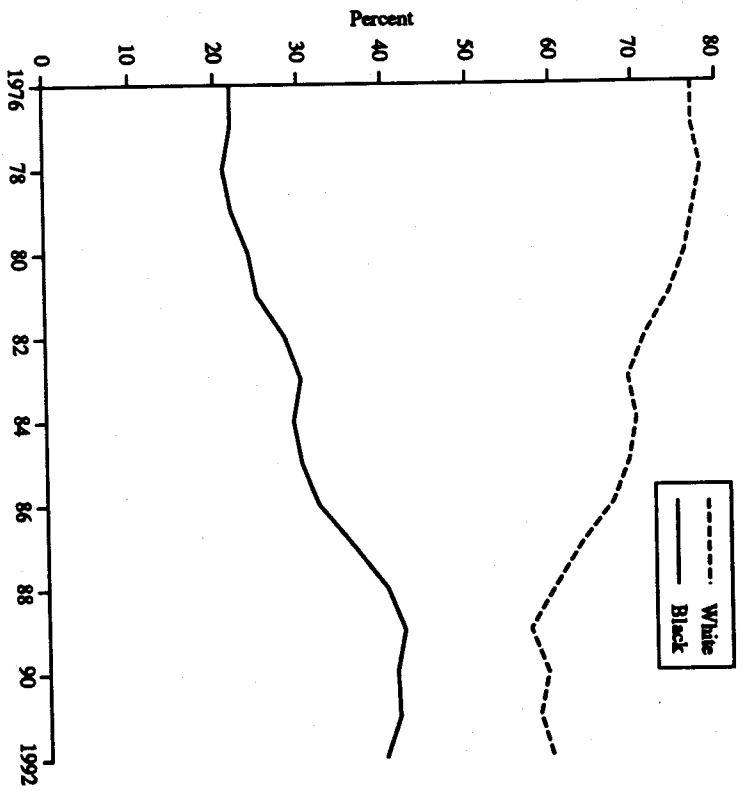


Figure 3-9. Percentage of U.S. Drug Abuse Arrests by Race, 1976-92
 Sources: Bureau of Justice Statistics, *Sourcebook of Criminal Justice Statistics* (Washington, D.C.: U.S. Department of Justice, various years from 1978 to 1992), various tables; Federal Bureau of Investigation, *Crime in America—1992* (Washington, D.C.: U.S. Government Printing Office, 1993), Table 43, p. 235.

1985 and 1989 the number of black arrests more than doubled, from 210,298 to 452, 574. The number of white arrests grew only by 27 percent.

The arrest percentages by race bear no relation to drug use percentages, as Table 3-4 shows. Black Americans are less likely to have used drugs than whites are, for all major drugs of abuse except heroin. In 1990, for example, a year in which 41 percent of drug arrestees were black, NIDA's national household survey on drug abuse indicated that only 10 percent of blacks reported that

Table 3-3. U.S. Drug Abuse Violations by Race, 1976-92

Year	Total Violations	White	White (%)	Black	Black (%)
1976	475,209	366,081	77	103,615	22
1977	565,371	434,471	77	122,594	22
1978	592,168	462,728	78	127,277	21
1979	516,142	396,065	77	112,748	22
1980	531,953	401,979	76	125,607	24
1981	584,776	432,556	74	146,858	25
1982	562,390	400,683	71	156,369	28
1983	615,081	423,151	69	185,601	30
1984	560,729	392,904	70	162,979	29
1985	700,009	482,486	69	210,298	30
1986	688,815	463,457	67	219,159	32
1987	809,157	511,278	63	291,177	36
1988	844,300	503,125	60	334,015	40
1989	1,074,345	613,800	57	452,574	42
1990	860,016	503,315	59	349,965	41
1991	763,340	443,596	58	312,997	41
1992	919,561	546,430	59	364,546	40

Sources: Federal Bureau of Investigation, *Uniform Crime Reports for the United States—1992* (Washington, D.C.: U.S. Government Printing Office, 1993), Table 43; Bureau of Justice Statistics, *Sourcebook of Criminal Justice Statistics* (Washington, D.C.: U.S. Department of Justice, 1978-92), various tables.

they had ever used cocaine (compared with 11.7 percent of whites and 11.5 percent of Hispanics), 1.7 percent reported ever using heroin (compared with 0.7 percent whites and 1.2 percent Hispanics), 31.7 percent reported ever using marijuana (34.2 percent whites, 29.6 percent Hispanics), 3.0 percent reported ever using hallucinogens (8.7 percent whites, 5.2 percent Hispanics), and 76.6 percent reported ever using alcohol (85.2 percent whites, 78.6 percent Hispanics).

As Table 3-4 also shows, whether the questions concerned drug use within the previous year or within the previous month, the comparative black, white, and Hispanic patterns were much the same. The only data in Table 3-4 showing higher levels of black drug use are for marijuana and cocaine use in the last 30 days and the "ever used" data on heroin. Although in percentage terms, blacks' reports of cocaine use in the preceding 30 days or heroin

Table 3-4. U.S. Percentage of Drug Use by Race, 1990

Drug	White	Black	Hispanic
Alcohol			
Ever Used	85.2	76.6	78.6
Most recent use	68.3	55.6	64.5
Within last year	53.1	43.7	47.1
Within last 30 days			
Marijuana			
Ever used	34.2	31.7	29.6
Most recent use			
Within last year	10.1	11.2	10.9
Within last 30 days	5.0	6.7	4.7
Cocaine			
Ever used	11.7	10.0	11.5
Most recent use			
Within last year	2.8	4.0	5.2
Within last 30 days	0.6	1.7	1.9
Hallucinogens			
Ever used	8.7	3.0	5.2
Heroin			
Ever used	0.7	1.7	1.2

Source: Bureau of Justice Statistics, *Sourcebook of Criminal Justice Statistics* (Washington, D.C.: U.S. Department of Justice, 1991), Tables 3.103, 3.104, 3.105.

use ever are three times the white levels (1.7 to 0.7), in absolute terms these differences are insignificant. There were, after all, 213 million white Americans in 1991, compared with 30 million blacks. Drug arrests are a principal reason that the proportions of blacks in prison and more generally under criminal justice system control have risen rapidly in recent years to the extraordinary levels indicated in Figures 2-1, 2-2, and 2-3 in Chapter 2, which show the percentages of blacks and whites among persons admitted to prisons and in prison and jail on survey dates over extended periods. The black percentages climbed slowly for several decades but rapidly after 1980.

The pattern of increasing black percentages is apparent in the aggregate national data on arrests and in state data. Figure 3-10 shows the national arrest rates per 100,000 population for whites

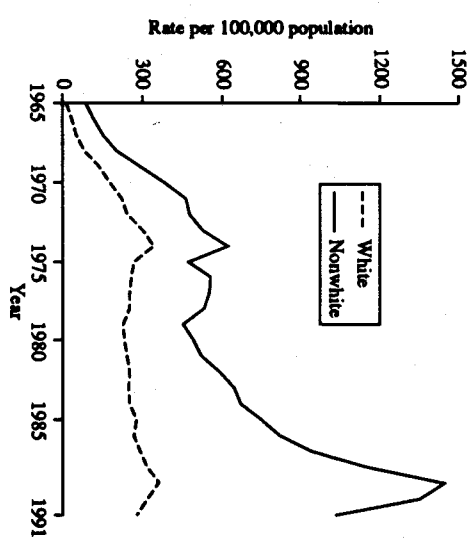


Figure 3-10. Arrest Rates for Drug Offenses, by Race, 1965-91
 Source: Alfred Blumstein, "Making Rationality Relevant: The American Society of Criminology 1992 Presidential Address," *Criminology*, January 1993, Fig. 1.

and nonwhites from 1965 to 1991. Nonwhite rates were higher than white rates, usually at least double, throughout that period. From the early 1970s onward, white drug arrest rates were basically stable, fluctuating around 300 per 100,000. After 1980, nonwhite rates rose steadily and then skyrocketed: By 1988 they were five times higher than white rates.

A more striking pattern of racial difference is revealed when juvenile drug arrests by race are examined. Alfred Blumstein, long-time dean of the Heinz School of Public Policy and Management, and America's leading authority on racial trends in criminal justice statistics, presented Figure 3-11 as part of his 1992 presidential address to the American Society of Criminology. White arrest rates for juvenile drug offenses were higher than those for black juveniles from the late 1960s to the early 1980s, though both rates fell sharply after 1974. After the early 1980s, white arrest rates continued to drop. Black rates shot up until the late 1980s when they were four to five times higher than white rates. Blumstein's "our kids, their kids" explanation for those trends is that drug use in the 1970s was a middle-income, principally white, phenomenon, which is why en-

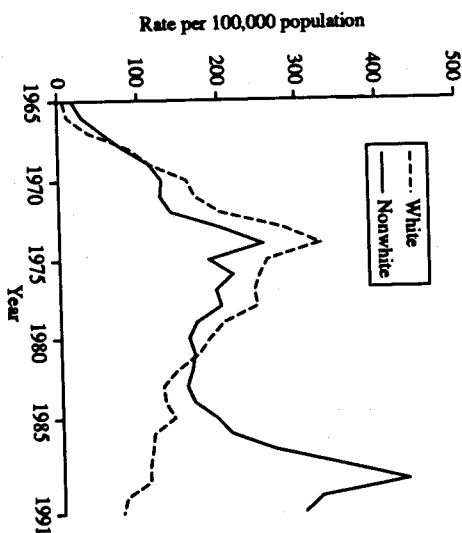


Figure 3-11. Arrest Rates of Juveniles for Drug Offenses, by Race, 1965-91

Source: Alfred Blumstein, "Making Rationality Relevant: The American Society of Criminology 1992 Presidential Address," *Criminology*, January 1993, Fig. 2.

forcement severity dropped, whereas in the late 1980s, drug use was a low-income, principally minority, phenomenon, which is why enforcement was uncompromisingly aggressive:

The decline after the 1974 peak was undoubtedly a consequence of the general trend toward decriminalization of marijuana in the United States. A major factor contributing to that decriminalization was undoubtedly a realization that the arrestees were much too often the children of individuals, mostly white, in positions of power and influence. These parents certainly did not want the consequences of a drug arrest to be visited on their children, and so they used their leverage to achieve a significant degree of decriminalization.

One irony attending the data on arrests is their juxtaposition with drug use patterns. They are out of synch. During the late 1970s and early 1980s when arrests were falling or essentially stable, as Figures 3-1 to 3-6 show, drug use climbed to its modern peaks and began falling, well before arrests and arrest rates began their steep climb.

Blumstein's analysis of national drug arrest trends by race is mirrored in the states. Stephens Clarke of the Institute of Government of the University of North Carolina at Chapel Hill, the pre-eminent scholar of North Carolina's criminal justice trends, reports that drug arrests of nonwhites in that state climbed five times faster than white rates between 1984 and 1989. Nonwhite drug arrests increased from 5,021 in 1984 to 14,192 in 1989, a 183 percent increase. White drug arrests increased from 10,269 in 1984, twice the nonwhite number, to 14,007 in 1989, less than the nonwhite number and an increase of only 36 percent. Similar patterns can be found in other states, as of course they must, since the respective increases nationally in black and white arrests between 1985 and 1989 were 115 and 27 percent. In Minnesota, drug arrests of blacks grew by 500 percent during the 1980s, compared with 22 percent for whites, according to Debra Dailey, director of the Minnesota Sentencing Guidelines Commission.

The drug war's effect on prison populations has been substantial, and since the mid-1980s it has been the single most important cause of population increases. Twenty-five percent of state prisoners in 1991 had been convicted of drug charges, as had 56 percent of those in federal prisons. Twelve years earlier, in 1979, a year for which a special population profile makes detailed state data available, 6.4 percent of state and 25 percent of federal inmates had been convicted of drug crimes.

At every level of the criminal justice system, empirical analyses demonstrate that an increasing black disproportion has resulted from the War on Drugs—in jails, state and federal prisons, and juvenile institutions. The title of a 1990 publication of the Department of Justice's Office of Juvenile Justice and Delinquency Prevention captures the juvenile story: "Growth in Minority Detentions Attributed to Drug Law Violators." The experience in several state prison systems is illustrative. Figure 3-12 shows nonwhite and white admissions per 100,000 same-race population to North Carolina prisons from 1970 to 1990. White rates held steady during the entire period. Nonwhite rates doubled between 1980 and 1990 from a higher starting point, growing most rapidly after 1987, the period when nonwhite drug arrests more than doubled.

Figure 3-13 shows increases in prison commitments in Pennsylvania between 1980 and 1990 for drug and other offenses by race and

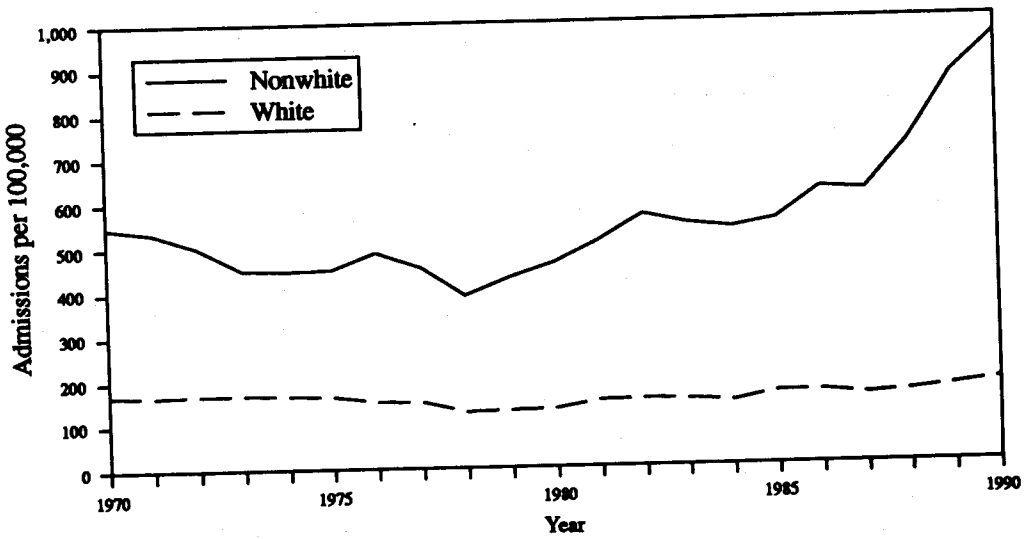


Figure 3-12. Prison Admissions per 100,000 General Population in North Carolina, by Race, 1970-90

Source: Stevens H. Clarke, "North Carolina Prisons Growing." *Overcrowded Times* 3(4)(1992): 1, 11-13.

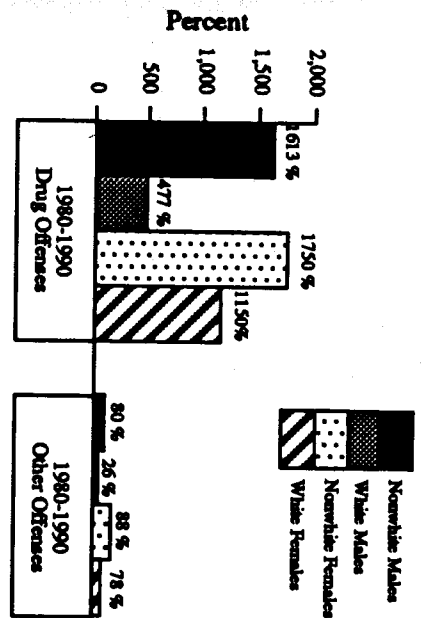


Figure 3-13. Percentage of Growth in Prison Commitments in Pennsylvania by Race, Sex, and Offense, 1980-90

Source: Stover Clark, "Pennsylvania Corrections in Context." *Overcrowded Times* 3(4)(1992): 4-5.

sex. Drug commitments of nonwhite males rose by 1613 percent during the decade; white males by 477 percent. The pattern for females was similar, though the differences were less dramatic. In 1990, 11 percent of Pennsylvanians were white; 58 percent of state prisoners were nonwhite.

Figure 3-14 shows white and nonwhite drug commitments to Virginia prisons from 1983 to 1989. Sixty-two percent of drug offenders committed in 1983 were white, and 38 percent were nonwhite. By 1989, those percentages had more than reversed; 65 percent of drug commitments were nonwhite, and 35 percent were white. Drug commitments have continued to rise since 1989; current data would show worse racial disproportion.

These figures are illustrative of prison admission and population trends across the country. Phrased most charitably to the officials who launched and conducted America's latest War on Drugs, worsening of racial incarceration patterns was a foreseen but not an intended consequence. Less charitably, the recent blackening of America's prison population is the product of malign neglect of the war's effects on black Americans.

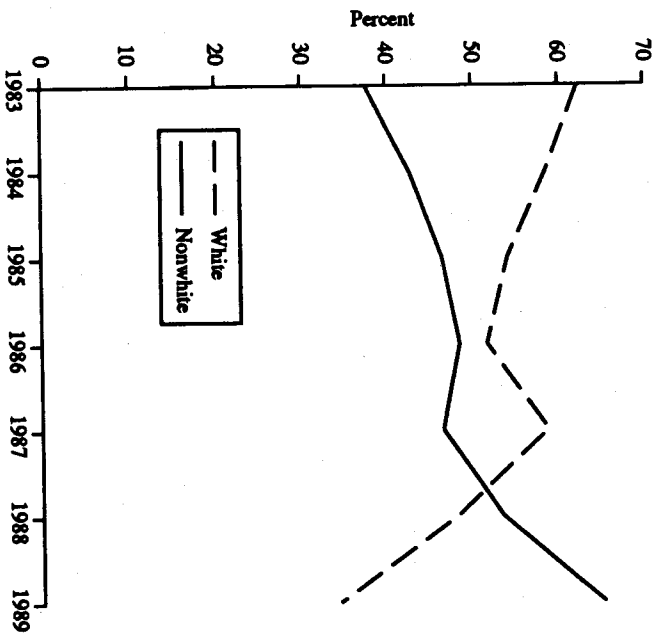


Figure 3-14. Percentage of New Drug Commitments in Virginia by Race, Fiscal Years 1983-89

Source: James Austin and Aaron D. McVey, *The Impact of the War on Drugs* (San Francisco: National Council on Crime and Delinquency, 1989).

The Case for the War

There was no basis on which policymakers could have believed in good faith that the key strategies of the War on Drugs would be so successful as to justify the burdens they would impose on minority citizens. By trying to reduce the supply of drugs, rather than demand for them, by adopting a prohibitionistic crime control approach, rather than a harm-reduction approach, policymakers chose strategies that had little prospect of succeeding but a high likelihood of worsening racial disproportions in the criminal justice system. The argument has two strands. The first concerns the evi-

dence for the effectiveness of drug-law enforcement per se. The second concerns the evidence on effectiveness of harsh crime control approaches generally.

There is no reason to doubt that drug-law enforcement has some modest dampening effect on drug use and trafficking, but there is no reason to believe that substantial increases or decreases in the scale of drug-law enforcement would substantially increase or decrease drug use or trafficking.

A prefatory glossary may be helpful. Although it is an oversimplified distinction, discussions of drug policy typically distinguish between supply reduction and demand reduction. Supply-reduction strategies aim to reduce the availability of drugs and, by reducing supplies and increasing risks, to increase their prices. The major supply-reduction approaches are source-country programs (crop eradication, financial support to other countries' drug-law enforcement agencies, extraterritorial assignment of American military and law enforcement personnel), interdiction programs (border patrols, air and marine surveillance and apprehension of importers, baggage inspection at entry points), and law enforcement efforts at local, state, and federal levels to arrest and punish people involved in drug trafficking.

Demand-reduction strategies try to persuade people not to use drugs and not to buy them. The major demand-reduction approaches are mass-media public education programs, drug education programs in elementary and secondary schools, drug abuse treatment programs, and law enforcement efforts aimed at possession of drugs. In addition—and this is why the broad distinction is oversimplified—supply-reduction efforts have collateral demand-reduction effects if their very existence and occurrence serve to create or reinforce social norms antithetical to drug use.

A second conventional distinction is between prohibitionistic and harm-reduction strategies. Prohibitionistic strategies forbid the use or distribution of drugs and attempt to enforce those prohibitions by means of legal threats backed up by the criminal justice system. Drug use and users are stigmatized as deviant and immoral. The principal reliance is placed on legal sanctions, and particularly in the United States, when the legal threats prove ineffective, the tendency has been to threaten harsher and yet again harsher penalties.

The logic of prohibitionistic approaches implies primary emphasis on supply-reduction strategies and on the criminalization of use, possession, and distribution of proscribed substances. That is why drug-law enforcement has been the principal cause of rapid prison population increases, and it is why the U.S. Congress and state legislatures in the 1980s repeatedly passed sentencing laws calling for mandatory minimum sentences for drug crimes.

Harm-reduction strategies, by contrast, treat drug abuse as a social problem with undesirable effects for drug users and for society and so attempt to minimize their aggregate adverse effects. By adopting the public health perspective on health problems—that it is more important to alleviate suffering and loss of health, life, and property than to render moral judgments on individual behavior—the main reliance is not placed on criminal processes and legal threats. In the Netherlands, for example, although law enforcement targets the importation and manufacture of drugs and high-level trafficking, harm-reduction approaches guide policy for handling social users, addicts, and user-dealers. Needle exchange and maintenance programs exist, serviced from mobile medical units and clinics. Addicts participate fully in the Dutch social welfare system and are entitled to both income support and health care. Drug abuse treatment is available on demand through the national health system. In certain areas of some cities, police turn a blind eye to street-level trafficking, and coffee houses sell small amounts of marijuana to customers. The effects are to weaken the illicit drug markets, to reduce drug market-related violence, to cut down on the health problems of drug users, and to retard the spread of AIDS. Dutch authorities also claim that their approach reduces crime generally by eliminating addicts' need to steal to support their habits. And they claim their approach lessens drug use by making it less beguiling to experimenting young people; addicts are seen for what they are, inadequate welfare-state clients, rather than countercultural outlaws symbolizing resistance to bourgeois values.

No doubt drug warriors would challenge some or all of my description of the Dutch experience, which is based on research conducted by the research division of the Dutch Ministry of Justice. Although I believe it is substantially accurate, my view is less important than that a picture of a harm-reduction approach has

been sketched. Any imaginable country will simultaneously pursue elements of both prohibitionistic and harm-reduction strategies, as the Dutch do and as the United States does. The question is one of balance. In recent years, American policy has tilted heavily toward prohibition, exemplified by a long-standing 70/30 federal funding split between law enforcement programs and treatment and education programs. Too many people in prison and too few people in treatment are among the results.

Every element of the supply-reduction approach has been shown to be ineffective. To quote Senator Moynihan again, a sometime supporter of the drug wars, "Interdiction and 'drug busts' are probably necessary symbolic acts, but nothing more." After surveying research and experience through 1990, James Q. Wilson, for two decades the country's leading conservative scholar of crime control policy and research, concluded that "significant reductions in drug abuse will come only from reducing demand for those drugs . . . the marginal product of further investment in supply reduction is likely to be small." He reports "that I know of no serious law-enforcement official who disagrees with this conclusion. Typically, police officials tell interviewers that they are fighting a losing war or, at best, a holding action."

Interdiction and source-country efforts have long been known by policy analysts and evaluators to be ineffective, but because they have had relatively little effect on racial trends in prosecution and incarceration, little about them is said here. The problem with interdiction efforts is that the boundaries of the United States are so long and so porous, and the volume of legitimate movement across borders so large, that it is impossible to intercept more than a small percentage of incoming drugs. A series of RAND Corporation analyses and evaluations commissioned by the Department of Defense so advised. In addition, the cost of imported drugs to U.S. distributors accounts for less than 10 percent of their street price. A RAND analysis estimated that doubling the volume of intercepted drugs would increase street prices by only 10 percent.

Knowledge of the effectiveness of source-country programs is even less encouraging. With the notable exception of reductions in Turkey's production of opium in the early 1970s that temporarily interrupted the flow of heroin into the United States, source-country programs have been ineffective. Partly this is because con-

ditions for growing cocaine, opium, and marijuana are suitable in many countries, and so production can easily shift from less to more hospitable places. Many of these places—in the Andes, in the “Golden Triangle” of Thailand, Burma, and Laos, in the mountainous regions of Southwest Asia—are outside the effective control of any government. Partly the ineffectiveness of source-country programs results from the unavailability of alternative cash crops for peasant farmers and of the economic infrastructure for marketing them. Again quoting James O. Wilson’s summary, “We should not expect much gain from even sharply increased [source-country efforts]. It is a view shared by many top federal law-enforcement officials.”

Domestic law enforcement is the remaining supply-side strategy, and the demonstrated success has been no greater. The ultimate measure of the effectiveness of drug control efforts at reducing the availability of drugs is their price. If drugs are becoming scarcer, simple economic theory tells us they should become more costly. If the risks of arrest and incarceration associated with drug sales are rising, simple economic theory tells us that those increased costs should be passed along and drugs should become more costly. To the contrary, since the early 1980s, as Drug Enforcement Agency and RAND Corporation data demonstrate, prices of cocaine have fallen steadily, and prices of heroin have alternated between stability and decline.

There are at least two other places to look for evidence of positive effects of supply-side efforts. One is to look at the literature on the effects of efforts to achieve deterrence effects by increasing penalties. The most deliberate and publicized increase of drug penalties in this country occurred in the early 1970s in New York when the “Racketeer Drug Laws” mandated harsh prison terms for traffickers and forbade plea bargaining that would avoid the mandates. A massive multi-year evaluation concluded that implementation of the laws had no effect on drug trafficking, drug use, or drug-related health problems.

Another approach is to look at the effects of street sweeps, in which police saturate an area in order to clean it. This tactic is highly popular with the public and with some drug policy scholars, but the best evidence is that sweeps move the drug markets around and, at least for a time, make drugs harder to find for some buyers,

but that overall they have no effect on the volume of drug trafficking in a city or metropolitan area. Arrested dealers are quickly replaced by others willing to accept the risks in order to win the rewards.

One last approach is to look at the evidence on the use, in general, of harsh penalties and war-against ideology in reducing crime. The War on Drugs was after all but one front in a series of wars against crime waged by the Reagan and Bush administrations. If vigorous enforcement and harsher and tougher penalties can be shown to lower crime generally, perhaps the War on Drugs can be justified as a specific application of that general proposition.

Here, too, the evidence is no more convincing. Although Reagan and Bush administration crime bills year after year increased penalties and extended mandatory minimum sentences to additional drug crimes, a conservative U.S. Sentencing Commission toughened penalties even more and insisted on their application, prison populations tripled from 1980 onward, and similar developments occurred in many states, there is little reason to believe that crime was much diminished. On mandatory penalties, a considerable literature instructs that they have had no, little, or transient effects. More generally, it has long been established—most authoritatively in this country by the 1978 report of the National Academy of Sciences Panel on Research on Deterrent and Incapacitative Effects—that imaginable increases in penalties are likely at most to achieve modest crime reduction through deterrence or incapacitation.

The last twenty years have provided a natural laboratory for assessing the effects of harsher penalties on behavior. Along with the trebled prison population since 1980, the 1993 report of the National Academy of Sciences Panel on the Understanding and Control of Violence observed that

while average prison time served per violent crime roughly tripled between 1975 and 1989, reported levels of serious violent crime varied around the level of 2.9 million a year. . . . If tripling the average length of incarceration per crime has a strong preventive effect, then violent crime rates should have declined.

That experience, said the panel, “is not compatible with any substantial deterrence effect.”

Appropriate skepticism about punitive crime control policies in

general or about supply-side drug control strategy in particular does not mean that drugs should be legalized or that there are no social benefits from law enforcement efforts. Drug-law enforcement, for example, through its clear message that drug trafficking is illegal and wrong, may help reinforce social norms against drug use. As long as private drug sales remain illegal, no one can disagree with enforcement targeted at the distributors, manufacturers, importers, and organizations that perform these functions. Similarly, few would argue that it is inappropriate to try to stop the flow of drugs through airports, tollbooths, and seaports or that police should not make arrests in drug-ridden neighborhoods to protect the right of residents to live in a safe and congenial environment. Even source-country and extraterritorial interdiction programs may be justifiable, albeit largely for dramaturgical reasons.

Much less need be said about demand-side tactics because the evidence is so much more positive. A sizable literature now documents the effectiveness of school-based drug education at reducing drug experimentation and use among young people. Recent work by Phyllis Ellickson of the RAND Corporation and Gilbert Botvin of the Cornell Medical Center are the most prominent among many demonstrations of the effectiveness of drug abuse education. Another sizable literature, recently summarized by Douglas Anglin and Yih-Ing Hser in *Crime and Justice*, and also by the General Accounting Office and the National Institute of Medicine, documents the capacity of drug abuse treatment programs to reduce drug use and drug-related crime. Late in 1993, the President's Commission on Model State Drug Laws, appointed by President Bush following a congressional mandate, categorically concluded, "Treating a congressional mandate, categorically concluded, "Treating effects of mass-media campaigns on drug use, but a judge could take judicial notice of their ubiquity, and it is not unreasonable to believe that such campaigns have reinforced changing social norms that have led to across-the-board falls in drug use in the United States since 1980.

Supply-side strategy has a role, but so does demand-side strategy. The choice between them is a false one. Rather, the question is one of balance, and, in setting that balance, the likely effects of alternative choices on members of minority groups are ethically and inexorably relevant consideration. It is hard to imagine any legit-

mate rationale for the decision by the drug war's designers to adopt policies that were unlikely to achieve their ostensible goals and that were foreordained to affect disadvantaged black Americans disproportionately. At the end of Chapter 1, I summarized the unpersuasive arguments offered by Bush administration spokesmen to justify the disproportionate impact on blacks of cynical crime control policies. The same unpersuasive arguments have been offered to justify the drug war's disproportionate effects on blacks. They are no more persuasive in this specific context than in general.

The willingness of the drug war's planners to sacrifice young black Americans cannot be justified. Crime and drug abuse do disproportionately affect disadvantaged minority communities. Amelioration of their effects should be a paramount policy priority. So much is clear. Racially sensitive policies would, however, take account of any foreseeable racially disparate impacts as well as the policy's likely instrumental effects. By those twin criteria, neither today nor in 1987 could anyone claim that supply-side methods were likely to be more successful than demand-side methods. What was clear both then and now is that a program built around education, drug abuse treatment, and social programs designed to address the structural social and economic conditions that lead to crime and drug abuse would have much less destructive impact on disadvantaged young blacks than would a program whose primary tactics were the arrest, prosecution, and lengthy incarceration of street-level sellers who are disproportionately black and Hispanic.

All that is left is politics. The War on Drugs and the set of harsh crime-control policies in which it was enmeshed were launched to achieve political, not policy, objectives, and it is the adoption for political purposes of policies with foreseeable disparate impacts, the use of disadvantaged black Americans as a means to the achievement of politicians' electoral ends, that must in the end be justified, and cannot.