



Hawks Ascendant

The Punitive Trend of American Drug Policy

Peter Reuter

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REPRINTS

Peter Reuter

Hawks Ascendant: The Punitive Trend of American Drug Policy

DRUG POLICY HAS GENERATED TWO DEBATES. The more elevated one concerns the retention of our current prohibitions, the legalization debate. Though it has occasionally impinged on the rhetoric of political discussion, as in the attack against legalization in the introduction to the first *National Drug Strategy*, this debate remains largely a parlor sport for intellectuals, divorced from the policy-making process. The more consequential, albeit less lofty, debate has been that between what are usually called the supply-side advocates and the demand-side advocates. The supply-siders, with former National Drug Control Director William Bennett as their most articulate spokesman, seek continued expansion of the nation's effort to imprison drug sellers and detect and punish (in various ways) drug users, while denying that they are slighting demand-side considerations.¹ The demand-side advocates, led by Senator Joseph Biden, while generally accepting the need for "vigorous enforcement," argue that current resource commitments to programs directly aimed at demand (prevention and treatment) are grossly underfunded and should be massively increased, even if this is at the expense of enforcement.²

Neither debate is satisfactory. The legalization debate is too focused on extremes, excluding the possibility of compromise. It is strident, with both sides casting aspersion on the values of the other. On the other hand, the debate between the supply and demand-siders is too narrow, allowing only minor programmatic tinkering.

Borrowing liberally from the classic essay of Nye, Allison, and Carnesale on approaches to preventing nuclear war,³ I propose to

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combine the two debates on drug policy into a three-sided discussion among hawks (supply-side advocates), doves (legalizers), and owls (bold demand-side advocates) about the nature of the drug problem and the consequences of different approaches to controlling it.⁴

Drug policy debates have been conducted largely in terms of images. The hawks point to the immediacy of the problems in the streets (particularly the carnage surrounding drug distribution) and reasonably (though in intemperate tones) ask whether efforts at drug prevention or treatment offer any reasonable hope for controlling those markets and associated violence in the near future. They note the apparently low success rates of drug treatment programs; many programs show relapse rates of more than 60 percent.⁵ Prevention programs aimed at seventh graders (the most commonly targeted grade) will reduce the number of adult drug addicts only with a five to ten year lag. Finally, they argue that effective prevention and treatment require intense enforcement, both to make drugs difficult to obtain (driving users into treatment) and to make drug use appear legally risky (reinforcing prevention messages).⁶

The doves' message is even clearer than that of the hawks. After defending themselves from the charge that they condone the use of drugs by asserting that society should strive to reduce use of all dangerous psychoactive drugs⁷ including alcohol and cigarettes, they go on to argue that most of the current evils associated with drugs arise from the prohibitions and enforcement of those prohibitions. The violence, overdoses, and massive illegal incomes that are such a prominent part of our current concerns with psychoactive drugs are not consequences of the nature of the drugs themselves but rather of the conditions of use that society has created. Doves are strong on critiques of the current regime⁸ but rather weak in describing their preferred alternatives. However, they are clear that criminal prohibitions should play no role in society's efforts to keep use of psychoactive drugs to a minimum.⁹

The current owls are less eloquent. They argue that drug enforcement has proven a failure. The intensification of enforcement throughout the 1980s failed to stem a massive growth in the nation's drug problems. Enforcement does not go to the root of the problem; with a loss of faith in source country control programs (such as crop eradication and crop substitution),¹⁰ the root of the problem is now seen to be the initiation of new users in the United States and the

failure to provide good quality treatment for addicts. Prevention and treatment receive a derisory share of what the nation spends to control its drug problems. Public treatment programs, faced with the most difficult clients, have far fewer resources to spend on those clients than do private treatment programs.¹¹ Success in reducing the nation's drug problem requires a change in spending priorities. *Sotto voce*, at most, they also suggest that intense drug enforcement increases crime and may exacerbate health problems related to drug use; however, they believe in the value of the criminal prohibition and significant enforcement against drug dealers.

This essay has two goals. The first is to describe the increasing success of the hawks. To an extraordinary degree, they have taken control of drug policy and given it a distinctively punitive hew. The second goal is the more difficult one, namely to suggest that the hawks may have gone too far. The punishment is expensive, not so much in money terms (though the sums are no longer trivial, even in an inflation-adjusted Everett Dirksen sense) as in terms of the human costs of locking up many people for relatively minor offenses and not locking up many others for more serious offenses. Intense enforcement also increases the harms caused by drug users to themselves and others. I believe that we might well be better off if we simply punished drug dealers less aggressively; I believe that matters would be still further improved if some of the money saved by reduced punishment were spent on better quality treatment of the drug dependent. But the emphasis should be on "believe"; I cannot claim to have shown the consequences of shifting to a less punitive regime. I hope, however, that the reader will be persuaded that the question of "excessive punitiveness" is worth considering.

This is clearly the essay of an owl¹² but of one that feels that his current representatives fail to present the position strongly enough. The concession that enforcement must be maintained at its current level importantly limits the domain of policy options, particularly at a time when federal drug control budgets have stopped growing in real terms and when the corresponding state and local budgets are likely to shrink. I shall suggest that more aggressive owliness, derived from the European "harm reduction" movement, is appropriate.

The differences among the three positions (summarized very crudely in *Table 1*, borrowed again from Nye, Allison, and Carne-

sale) in part come from different views of what constitutes the drug problem and the sources of that problem. For hawks, the heart of the matter is the threat to youth and to American values; drug use means an abandoning of concern with others, and focusing on short-term pleasures for oneself. It is a lack of clarity about values in society and a failure to ensure that drug use is punished that leads to so many young people becoming regular users of psychoactives. The violence and health damage are merely the visible emblems of a more fundamental problem. The first *National Drug Control Strategy* says it eloquently: For "most drug users" use is the result of a "human flaw" that leads them to pursue "a hollow, degrading and deceptive pleasure." What is required is "a firm moral stand that using drugs is wrong and should be resisted." If values are the heart of the matter, then all institutions of society must join in the fight; the 1992 *Strategy* says "[T]he family, neighborhood, community, church, school and workplace must be very active in this effort. If they are not, they implicitly signal to young people that drug use is not to be taken seriously, at least not seriously enough to do anything about it."

Doves believe that individuals use psychoactive substances because they provide pleasure and that society should minimize the harm that results from the use of such substances without criminalizing the choice of a particular substance. Psychoactive drugs can harm individuals and society has a responsibility to inform adolescents about the consequences of choosing drugs and to help those who become dependent deal with the problem. But the criminal law makes those tasks more difficult as well as imposing direct costs on society.

Owls focus on the damage arising from heavy drug use by a relatively small number of those who become dependent. The health consequences are given considerable weight. Again, drug use is regarded as evil in and of itself but, in my preferred version, attention is given to the evils created by enforcement. Criminal law may be an important tool for minimizing the damage done by dangerous and attractive psychoactives in a world of imperfect decisionmakers but enforcement is a not a good in itself; indeed, one wants the lowest level of enforcement compatible with keeping initiation down and encouraging the dependent to seek treatment.¹³ Drug control is also not the only goal, and higher drug use may be accepted in return for

TABLE 1. Drug War Strategies: Hawks, Owls, and Doves

Position	Nature of Drug Problem	Explanation for Drug Use	Policy Emphasis	Consequence of Failure
HAWKS	Amorality of Drug Users & Sellers	Selfishness, Lack of Clear Social Values	Tough Enforcement	Violence, Repression
OWLS	Addiction, Disease	Adverse Social Conditions	Prevention, Treatment, Prohibition	Continuation of Present Problems
DOVES	The Bad Effects of Prohibition	Pleasures from Drugs	Legalize, Inform	Large Increase in Drug Abuse

better performance with respect to some other social goal, such as reduced spread of HIV infection.

There is much truth in the descriptive statements of all three groups. Indeed, I suspect that they are all true. However, none of them provide much help in working out what our drug policy should be. No one can describe, even very roughly, the consequences of doubling the number of treatment slots available for addicts without insurance coverage for such treatment, or what would happen if we were to increase the number of drug arrests by 25 percent. Over five years, would these result in declines of 20 percent in the extent of heroin addiction or in drug related homicides? What else might occur as a consequence, positive or negative, of these actions? The doves may be correct that many of the current evils are the consequence of prohibition but they have little basis for suggesting the consequence of the removal of those prohibitions on either the extent of use or the way that users would behave in a legalized regime.¹⁴

The research minded reader at this stage may object that recent experiences ought to allow us to examine the effects of at least some policy variation. Cities differ in the extent of treatment availability and stringency of enforcement. Surely that should provide the basis for determining whether tougher enforcement reduces drug use. Unfortunately, the data available at the local level are so sparse and inconsistent that research on the consequences of local variation is still in its infancy.¹⁵

An alternative source of insight might be the experiences of other countries, at least other developed nations. Again the research effort

in this area is barely nascent but I will briefly show that some Western European nations have adopted much less punitive approaches and have fared no worse than the United States in terms of controlling drug use and its related harms.

But whatever the shakiness of the arguments and evidence of the various positions, the simple truth is that the hawks have prevailed; indeed their ascendance still seems to be increasing. Thus the next section deals mainly with their position, describing the many dimensions of their success. The section entitled "Changing Patterns of Drug Use and Related Problems," summarizes what has happened to the drug problem since 1980, pointing to the mixed record of success of American drug policy. A later section presents what we can reasonably claim to know about "the consequences of toughness," both good and bad. It also includes a brief survey of the experiences of Western Europe, to show what other approaches are possible. The concluding section begins with a short excursion into the political dynamics of the drug issue, explaining why the hawks almost always win, and then speculates about the likely future of US drug policy.

THE TRIUMPH OF THE HAWKS

Many have noted that American drug policy has traditionally been heavily dependent on criminal law when compared to most other Western societies. Particularly in the last decade, the hawks have been in soaring ascendance. Though they grumble about the lack of severity in punishment of drug users and dealers, they have managed to massively increase funding for such punishment, to expand the scope of efforts to detect drug users in many settings and to intensify the severity of penalties imposed on those convicted of selling or using drugs.

Budgets, Legislation, and Programs

Budget allocations help make the point. The federal budget for drug control has increased substantially over the last decade; in constant dollars it has risen from \$1.5 billion in fiscal year 1980 to \$6.7 billion in fiscal year 1990. Throughout that period it has been dominated by enforcement programs; the share going to such programs never fell below 70 percent and rose as high as 80 percent. The federal drug

control budget in 1990 allocated only 29 percent of total expenditures to treatment and prevention.

Even this understates the extent of the hawks' budgetary dominance. State and local governments spend more in total than the federal government (even eliminating federal pass-throughs) but allocate a still smaller share to treatment and prevention programs. It is difficult to assemble a national drug control budget, since most state and local drug enforcement is carried out by nonspecialized law enforcement agencies and the allocation of their budgets to drug control has a very judgemental element. My own estimate is that in 1990, state and local governments spent roughly \$18 billion on drug control and 80 percent of that went for enforcement.¹⁶ This suggests a 1990 national drug control budget of \$28 billion for all levels of government, with 75 percent going to enforcement.¹⁷ Less than \$5 billion went to treatment, compared to over \$20 billion spent on enforcement of various kinds, mostly at the local level. Indeed, the treatment figure may have been only \$3 billion, though there may be another \$2 billion of private funding through health insurance.

Budget allocation is of course only one measure of the hawks' triumph. Legislatures throughout the country, with the US Congress very much in the vanguard, have dramatically increased the sentences for drug offenses, though prison overcrowding has undercut the effectiveness of these sentencing statutes. For example, in the 1988 Anti-Drug Abuse Control Act, Congress raised the mandatory sentence for selling 50 grams of crack to five years. The state of Michigan has imposed mandatory life imprisonment without parole for those convicted of selling 650 grams of cocaine. Congress has required that states impose various penalties, such as loss of drivers' licenses, for persons convicted of drug offenses, including simple possession of marijuana; federal highway funds are to be withheld from states that do not impose such penalties.

Drug testing programs have become almost ubiquitous in many institutional settings, with an emphasis on penalty rather than treatment for those who test positive. For example, many of the new Intensively Supervised Probation programs require frequent drug testing though providing few of their clients with access to drug treatment.¹⁸ The federal government has imposed drug testing on much of its civilian work force, while perhaps half of large corporations test job applicants for drug use.

I include the recent decisions by the Drug Enforcement Administration (DEA) and by the Public Health Service (PHS) to disallow use of marijuana for medical purposes, even on an experimental basis, as reflecting the hawkishness of current policies. DEA is responsible for the scheduling of drugs; marijuana is currently classified as Schedule I (high abuse potential, no currently accepted medical use in treatment). A number of organizations initiated a suit in 1972 seeking to have the drug reclassified as Schedule II, allowing it to be prescribed. They claimed that marijuana can alleviate nausea associated with chemotherapy as well as relieve glaucoma; it now also appears that marijuana can improve the appetite of AIDS patients. The PHS has, for the last year, allowed "compassionate" approval of marijuana prescriptions, produced on the government's marijuana farm in Mississippi, for thirteen patients.

In March 1992, the head of DEA once again refused to reschedule marijuana and the PHS announced the end of the compassionate exemption program. Both agencies deny that they had any concern with the symbolic effect of allowing marijuana to be used for therapeutic purposes.¹⁹ On the basis of conversations with various government officials and other observers, I disbelieve that claim, though I can offer no documentary backing for this. The official argument asserts that there is no credible evidence that marijuana, as opposed to synthetic drugs containing some of its active ingredients, has greater therapeutic value. In large part this reflects the lack of research on the topic. The PHS rejection flew in the face of a survey of oncologists that found a majority who believed that marijuana should be available on prescription.²⁰ Indeed, that survey found that almost half of the oncologists responding currently advised their patients to use marijuana, even though the drug was not legally available. The DEA Administrator's decision reversed a remarkably strongly worded decision by the administrative law judge that the Schedule I classification was "unreasonable, arbitrary and capricious." The head of the Public Health Service did suggest that it would send a "wrong signal" to hand out a drug that can cloud judgement with respect to automobile driving or sexual behavior.²¹

The rejection of experimentation with marijuana for therapeutic purposes has an earlier parallel in the rejection of heroin for treatment of pain. In many other nations, heroin is routinely provided for relief of pain in terminal cancer patients; here it remains on

Schedule I, not allowed for any medicinal use in treatment. There is a genuine controversy about whether other synthetic opiates might not be more effective in each of the possible circumstances that heroin is a candidate pain reliever. However, the evidence for the effectiveness of heroin is strong enough that it might be left to the individual physician to decide; leakage to the illicit market is likely to provide only a negligible supplement to existing supplies.

Marijuana's "signal" value has also been emphasized by the concerted effort to reverse the decriminalization statutes that were passed in thirteen states in the 1970s. William Bennett appeared before a number of state legislatures to argue for recriminalization and was successful in Alaska in 1990.

Increasing Punitiveness

One symbol of the hawks' success is that they have managed to sustain the belief that drug sellers and users are at low risk from law enforcement, a belief that has helped promote more stringent sentencing statutes. They have emphasized stories about arrested drug sellers returning to the streets more rapidly than the police who arrested them and not getting jailed until they have been convicted numerous times. The truth is more complicated. By contemporary American standards, drug selling has become quite risky and drug use may be very risky for certain classes of users.

All this depends on a great deal of speculative arithmetic, which is only summarized here.²² Enforcement intensity is a function not simply of the total number of arrests or imprisonments for drug offenses but of the ratio of such figures to the number of drug offenses. It is hard to find good measures of the number of such offenses but if the rise in illicit drug episodes, in Drug Abuse Warning Network (DAWN), is taken as a surrogate, then it rose faster than arrests or imprisonments from 1980 to 1985 but not as rapidly from 1985 to 1990. Moreover, most drug arrests probably did not lead to serious penal sanction in the first period but in the second half of the 1980s aggressive arrest policies at last led to large increases in the number of incarcerations. Thus it is likely that the intensity of enforcement decreased, at least for cocaine offenses, in the first half of the 1980s but then rose in the second half of that decade.

So far I have not made much of differences among drugs. Law and policy appropriately make such distinctions, though not necessarily

TABLE 2. Disposition of California felony drug arrests, 1980, 1985, 1990

	1980	1985	1990
Felony Arrests	40,451	63,766	84,538
Disposed of Number			
Convicted	18,800	30,100	53,200
(percent of arrests)	(45)	(48)	(63)
Number to State			
Prisons	921	3,366	10,494
(percent of convicted)	(5)	(11)	(20)
Number to Jail	9,700	22,500	33,900
(percent of convicted)	(52)	(75)	(64)

Source: Unpublished tabulations, California Bureau of Criminal Statistics

in appropriate ways. Enforcement has been quite drug specific and the impacts differ by drugs. Most attention in this section will be given to cocaine but it is worth noting marijuana enforcement patterns as well. In contrast to cocaine, marijuana enforcement became more stringent throughout the decade as usage dropped.

Enforcement has increased massively in absolute terms. The number of state and local arrests for drug offenses increased rapidly, from 581,000 in 1980 to 1,090,000 in 1990. The composition of these arrests changed in an important way over the same period. Whereas the 1980 total was dominated by arrests for marijuana (70 percent) and possession (82 percent) offenses, in 1990 heroin/cocaine²³ arrests had come to exceed the number for marijuana (591,000 versus 391,000) and distribution arrests now accounted for a much larger share than in 1980 (27 percent versus 18 percent). In effect, the average seriousness of arrest offense has increased sharply.

Arrest is only the first step in the criminal justice process; it is conviction and sentence that provide the principal punishment, though arrest itself can lead to seizure of drugs and other assets. At the national level we cannot systematically trace through the disposition of arrests prior to 1986. We have to rely on fragments of data collected for a few states on an occasional basis to get a sense of how many drug offenders were imprisoned during the earlier years.

The best data cover felony drug arrests in California; *Table 2* shows the disposition of these arrests in 1980, 1985, and 1990.

The number of felony drug arrests disposed of increased by about 21,000 in each half of the decade. What changed dramatically was

the disposition of those arrests. The percentage convicted rose, particularly after 1985, and the percentage of convictions resulting in prison sentence went up dramatically. The total number of persons sent to prison for drug offenses rose threefold between 1980 and 1985 and tripled again in the following five years; over the entire decade the figure rose from less than 1,000 to over 10,000. A focus simply on the number of drug arrests fails to capture the increasing stringency of enforcement.

Nationally the only available data on the sentencing for felony drug convictions cover 1986 and 1988.²⁴ In that two year period there was a very sharp increase (from 135,000 to 225,000, approximately a 70 percent rise) in the number of persons convicted of felony drug trafficking or possession charges.²⁵ The number receiving state prison sentences (i.e., more than twelve months) rose from 49,900 to 92,500, though there was a modest decline in their expected time served from twenty-two months to twenty months.²⁶ In 1988 drug offenses accounted for approximately one-third of all felony convictions in state courts.²⁷

The most recent year for which available data permit rough estimates of prison and jail years meted out for drug felonies by state courts is 1988. About 90,000 persons were sentenced to prison, and another 65,000 were sentenced to local jails. The federal court system also imposes punishment on drug dealers. Though federal drug convictions constitute a small share of the total, the average time served for those incarcerated is much higher than for state sentenced offenders, reflecting mandatory penalties for many drug selling offenses of ten years or more and no parole. In 1988 federal courts generated an estimated 50,000 years of expected prison time for drug dealers, compared to only one-tenth that amount in 1980. That reflected increasing numbers of convictions, rising sentence length and, most significantly, a rise in the share of sentences that the inmate expected to serve; this last was the result of the imposition of sentencing guidelines and the abolition of federal parole. The total of federal and state incarceration figures for 1988 was about 200,000 cell years; this is perhaps ten times the 1980 figure.

The Penal Risks of the Drug Trade

One way to assess what this punishment represents is to consider the risks of arrest faced by users, and the risk of imprisonment faced by sellers, of cocaine and marijuana.

To calculate roughly the 1990 absolute risks per user year for the two drugs, we need estimates of the total number of current users. If there were 15 million marijuana users, a relatively generous figure based on the survey data,²⁸ then they faced an average risk of 2 percent of arrest in that year; though this seems low, note that in steady state that amounted to a one in five chance of being arrested in a ten year using career. For cocaine, with a much smaller user base (no more than perhaps 5 million, ignoring those who use less than once per month), the annual arrest risk was 6 percent. The risk in a ten year using career might then be as high as 60 percent.

These are, of course, very aggregate calculations. Not all users are at the same risk of apprehension. Those who use frequently might be expected to be at much higher risk because they engage in more of the risky transaction of purchase. But there are other characteristics that seem to be associated with risk of arrest for drug possession, in particular race and gender. In the District of Columbia, of those residents arrested for drug possession between 1985 and 1987, 96 percent were African-American; 82 percent were male. No reasonable estimate of the prevalence of drug use in different populations would suggest that this represented the share of African-Americans or males in the drug using population. These percentages probably reflect the fact that many possession arrests are failed sales arrests; a seller is caught with drugs but not in the act of selling and the seller population in exposed situations (i.e., selling on the street and in crack houses) seems to be predominantly male and (in the District of Columbia) African-American.

In summary, some user groups may be at very high risk of apprehension, others at quite modest risk. That is not a casual observation, since I shall suggest later that it appears that the big declines in drug use have occurred among the groups at low risk of arrest.

For sellers the arrest risks differed even more substantially for the two drugs. Using the same assumptions as Reuter and Kleiman²⁹ concerning the ratio of buyers to sellers for each drug, marijuana sellers may have faced not much more than a 10 percent probability of being arrested in the course of a year of selling; the comparable figure for cocaine might be as high as 40 percent.

I estimate that the total cell years in 1988 for marijuana sellers was about 40,000 and for cocaine sellers about 110,000. The ratio of

marijuana to cocaine is surprising in light of the great concern attached to cocaine use. But the federal courts, which provide clearly separated figures for the different drugs, show a similar ratio. The cell year calculations are more speculative than those for arrests, but 110,000 cell years for a population of perhaps 350,000 cocaine dealers suggests that by 1988 that activity had indeed become a risky one. A study of drug dealers in Washington, D.C. in the late 1980s³⁰ estimated that street sellers of drugs faced about a 22 percent probability of imprisonment in the course of a year's selling and that, given expected time served, they spent one-third of their selling career in prison.

Does this make drug selling appropriately risky? One-third of one's time in prison strikes me as a lot. On the other hand, the risk per selling transaction is extraordinarily low; a seller who works two days per week at this trade may make 1,000 transactions in the course of a year. His imprisonment risk per transaction is only about 1 in 4,500; by that metric it is a great deal lower than the risks associated with other crimes, such as burglary and robbery. Another way of expressing the risk is that a dealer may spend a day imprisoned for each ten sales transactions.

In many ways these figures mirror the realities for property crimes. Most robberies and burglaries result in no arrest; yet those who engage frequently in robbery or burglary are likely to spend a significant portion of their criminal careers incarcerated. So it appears to be for those who are regular drug sellers, at least in exposed settings.

CHANGING PATTERNS OF DRUG USE AND RELATED PROBLEMS

By historic and international standards, use of illegal psychoactive drugs in the United States in the early 1990s is extraordinarily high.³¹ Moreover, that drug use is associated with more severe and diverse problems than those associated with illegal drugs in other periods or societies. It is almost certain nevertheless that the prevalence of drug use has declined sharply from the dizzying heights of the early to mid-1980s and is likely to continue to decline. These two discordant facts present a dilemma in assessing the effectiveness of current policies. Should we focus on the high absolute levels, and conclude

that these policies have failed, or on the declines and conclude that they are finally succeeding?

In any assessment it is important to note that the levels of drug use and drug problems (as well as their declines) are far from uniform across population groups. Drug abuse or dependence³² is increasingly concentrated in inner-city populations and appears to be disproportionately a problem for the minority community, particularly inner-city, young, African-American males. Drug use apart, inner-city communities have been much more affected by the violence and disorder surrounding drug distribution. This skewing of adversities has had an important influence on the politics of drug policies. For most of the nation the drug problem is lessening but for many poorer communities there are few, if any, signs of relief; this exacerbates the growing sense of a division within society, the emergence of a hardening into "Two Nations."

The Prevalence of Drug Use

The broad population surveys, of the household population and of high school seniors, tell a consistent story.³³ Initiation into drug use (as measured, for example, by the percentage of successive cohorts of 18 year olds reporting use in past year) escalated rapidly in the late 1970s and early 1980s and then began to decline by 1986 or slightly earlier. The peaks were alarming; in 1978, 11 percent of high school seniors reported using marijuana on a daily basis in the previous month. Every number is now down sharply from its peak; for example, by 1991 less than 2 percent of seniors reported daily use in the previous month.

The declines, as reported in the surveys, have been surprisingly evenly spread across age/race/sex groups. The surveys also have shown a complex and changing relationship between education and drug use. In 1985 prevalence rates among males born between 1959 and 1964 were very similar for high school graduates and for dropouts; indeed the former showed slightly higher rates for both recent use (past thirty days) and past use (last twelve months). By 1990 the rates had fallen much more sharply for the high school graduates, particularly for past use. Differences in the declines for recent use were less marked, perhaps because this included more people who were habituated to drug use. The emerging negative

correlation between education and cocaine use is consistent with the changes in cigarette use.³⁴

The surveys provide mixed support for hypotheses about higher rates of drug use among African-Americans and Hispanics. The high school senior surveys consistently show sharply higher prevalence rates among whites.³⁵ However, the National Household Survey shows higher rates for African-Americans; in the age group 26–34 for example, in 1990, the percentage reporting some use of an illegal drug in previous month was 13.7 percent, compared to 9.5 percent for white respondents.³⁶

The broad surveys can reasonably claim to provide a valid measure of trends in the extent of drug use among the general population, though they have serious weaknesses even in that role. Increased stigmatization of drug use reduces the willingness of respondents to report that they are actually users; however, that stigmatization also reduces the extent of use. Thus the surveys may exaggerate the downward trend in use but it is unlikely that they misrepresent the direction.

But no one doubts that the broad population surveys miss a great deal of the most important behavior, namely frequent drug use. There are at least three reasons for this. First, the surveys do not include some critical populations in their sampling frames (for example, the homeless³⁷ and prisoners) who are believed to have high rates of drug abuse. Moreover, the size of these noncovered populations has risen and their composition has changed; both populations now seem to include higher percentages with drug abuse problems than they did in 1980. Second, those who use drugs frequently, even if formally included in the sampling frame, are likely to be more difficult to reach because they behave more erratically. Third, the response rate for the survey has declined from 83 percent in 1985 to 79 percent in 1990; this nonresponse increase may well be related to increased disapproval of drug use and thus lower willingness to even participate in a survey.

Moreover, the credibility of the surveys as a good representation of the nation's drug problems was undermined in the late 1980s by the dramatic discrepancy between the most publicized findings of those surveys and public perception of the changing problem. While the surveys pointed to substantial declines in drug use, it was widely believed that the drug problem was getting a great deal worse. The

surveys also pointed to quite modest numbers of persons with severe drug problems; for example, the number of persons using cocaine weekly or more frequently was estimated at less than 1 million, which seemed inconsistent with the severity of cocaine-related problems.

Two official indicators supported the popular beliefs. DAWN reported data on the involvement of drugs in Emergency Room (ER) cases and in Medical Examiners' (ME) reports on deaths. DAWN, in contrast to the survey data, showed dramatic increases in cocaine mentions throughout the 1980s; the total number rose more than tenfold between 1980 and 1988. Beginning in 1988, the Drug Use Forecasting (DUF) system collected data on the prevalence of recent drug use by arrestees in twenty major cities, relying on analysis of urine specimens. It found very high rates of drug use in the arrested population and produced estimates of the number of frequent users that were very much higher than those derived from the household survey. Moreover, both DAWN and DUF pointed to a concentration of problems in the inner city. DAWN which increasingly measures the extent of drug dependence,³⁸ also suggested that whatever is happening to drug use generally, the number of cocaine dependent persons rose substantially between 1980 and 1990.³⁹

Dependence

Measurement of the extent of drug dependence or frequent use is casual, almost to the point of irresponsibility. Though it is often asserted that there are 500,000–750,000 heroin addicts in the United States, it is impossible to find any systematic estimates post-1980; the number has its origins in murky and questionable manipulation of little understood data series.⁴⁰ It is, however, reasonably well documented that heroin use increased rapidly during the period of about 1967 to 1973 and that the number of new initiates fell rapidly after that. However, if the correct figure is 750,000, then the United States, fifteen years after the end of the epidemic of heroin initiation, appears to have as high a rate of heroin dependence as any developed nation.⁴¹

The DAWN data suggest that the heroin addicted population is still dominated by the cohort of inner-city minorities who first became addicted around 1970, when they were in their late teens and early twenties. The population of DAWN heroin ER cases is about 50 percent Hispanic and African-American, and getting older;

whereas 32 percent were over thirty-five in 1983, that percentage had risen to 50 percent by 1989.⁴² Data on admissions to publicly funded treatment programs also point to an aging population that is dominated by minorities. Most heroin addicts have been in drug treatment programs frequently but heroin addiction, at least in this population, shows similarity to alcoholism; it can be characterized as a chronic, lifetime, relapsing disorder. DUF shows older arrestees to be more likely to test positive for opiates (almost exclusively heroin) but also shows surprisingly high rates among youthful arrestees, suggesting perhaps a resurgence of heroin initiation among the criminally active.⁴³ The new initiation may occur primarily among those who are already regular cocaine users.

More attention has been given to measuring the prevalence of frequent cocaine use. Indeed, there has even been a short-lived but vigorous controversy about this, with William Bennett and Senator Biden conducting an undignified shouting match about the number on national television.⁴⁴ The household survey produces an estimate of less than one million persons using cocaine at least once a week; indeed, for 1990 the figure was only 662,000. Using data from urine tests of arrestees in major cities, analysts have produced estimates of over two million.⁴⁵

The urinalysis data show extremely high rates of cocaine use among arrestees. In most cities, over 50 percent of those arrested test positive for cocaine; supplemental interviews also show quite high rates of self-reported dependence among those who test positive for cocaine or heroin. What makes these figures particularly alarming is that arrest is not a rare event for young males, particularly less educated youth in large cities. Tillman,⁴⁶ reporting on the 1956 birth cohort in California found that 34 percent of white males were arrested between the ages of 18 and 29; the figure for black males was 66 percent. The 1956 cohort came to maturity before the growth of the cocaine markets. For the 1967 cohort, Reuter, MacCoun, and Murphy found that in the District of Columbia, perhaps one-quarter of the males were charged with at least one criminal offense, mostly a felony, between ages 18 and 21.⁴⁷ For African-American males in the Washington, D.C. cohort, the rate was approximately one-third. A majority of those charged had at least one drug offense among those charges.

The DUF data have only been collected since about 1988, so they cannot be used to describe trends over the decade of the 1980s. However, in the District of Columbia, urinalysis data have been collected since 1984. Over the period 1984–1988, there was a dramatic increase in the percent testing positive for cocaine, with little decline in the percent testing positive for other drugs. There has been a substantial drop since the peak figure of 68 percent for cocaine in May 1988 but in late 1991 the percentage testing positive for cocaine was still about 50 percent, and had been at that level for a year. DUF figures show most cities to have lower rates than the peaks of 1988 and 1989 but the declines are modest. In Chicago the cocaine positives were down to 53 percent in the first quarter of 1991, compared to the peak of 64 percent in the fourth quarter of 1989.

In summary, these, and other data, suggest that the number of drug users has declined since the peak of the early to mid-1980s. However, there has been a much slighter, and later, decline in the numbers experiencing, and causing, significant problems related to their own frequent use of drugs. An increasing share of the drug abusing population is found among the inner-city poor, as the more educated became more concerned about the health consequences of drug use. The poorer users are criminally active; their criminal activity is exacerbated by this drug use. That has enormous consequences for the politics of drug policy.

Costs

It is all very well to have estimates of the numbers of drug users and abusers. What costs, social and economic, should we attach to these figures? How significant is this problem?

The federal government has sponsored a series of four estimates of the economic cost of drug abuse.⁴⁸ For 1985, the estimated economic cost was \$44 billion, compared to \$70 billion for alcohol abuse and \$103 billion for mental illness. It is hard to know what to make of these numbers, even if taken at face value, but the simple truth is that they are essentially irrelevant for our purposes because they are dominated by what the government spends to control the problem and they miss major elements of the social costs associated with illicit drugs. Particularly troubling is the treatment of the cost of crime associated with drug abuse. This is estimated to be \$13 billion, of which 90 percent is public expenditures on law enforcement; the loss

of safety and amenity is treated as zero. Yet in terms of dollars that individuals would be willing to spend to have lower crime rates in their community, that cost might well be much larger than the figures cited above.⁴⁹

Estimates of the number of drug users is probably not a good metric for scaling the drug problem. After all, as even William Bennett noted in the introduction to the first *National Drug Strategy*, most drug using careers are short, with only a few episodes involving drugs other than marijuana and are ended without requiring any treatment. Estimates that large numbers experiment with drugs or use drugs on an occasional basis does not mean that use of illicit drugs constitutes a major problem. Alternatively put, is there a credible base for the popular fears that briefly made drugs the leading social problem in 1988 and 1989?

Some drugs such as LSD and PCP can cause substantial and lasting damage to an individual who uses them just once; this, however, is an extremely rare event for cocaine, heroin or marijuana. It seems likely that the vast majority of those who use these latter drugs only a few times suffer little harm as a consequence. The external costs of their use in aggregate may be high, if for example they provide a substantial share of the total market for illicit drugs and that market generates violence and corruption, but the costs to the individuals look modest. Moreover, it seems likely that occasional users actually account for a small share of total consumption, so that it is also unlikely that they impose high external costs through their contribution to the violence and disorder surrounding markets.

It is appropriate then to focus on those who are drug abusers in order to obtain an understanding of the costs to individuals. The standard comparison of morbidity and mortality suggests that illicit drugs present only a moderately serious problem. Compared to alcohol or tobacco, the numbers of users, abusers, premature deaths, and disease associated with all illegal drugs together is small. Tobacco accounts for about 400,000 premature deaths annually, alcohol for about 100,000. It would be hard to sustain a figure of more than 20,000 premature deaths from the direct effects of illegal drugs; even if half of all homicides are drug related, the figure is still barely 30,000.⁵⁰ Nor are the figures for morbidity impressive. With a base of frequent users of no more than 3 million, the health effects are tiny compared to those associated with the 50 million regular cigarette

smokers and the 10 million heavy drinkers. On the grounds of the health costs, it could scarcely be claimed that use of illicit psychoactives constitutes a social problem of the first order.

That is a highly aggregative argument. Whereas alcohol and cigarettes strike all socioeconomic groups, illegal drugs bear disproportionately, in terms both of morbidity and mortality, on lower socioeconomic status and minority populations. Thus it might be that for these populations, particularly in center cities, illicit drugs are indeed a major health issue. However, it appears that these populations are also disproportionately affected by alcohol and cigarette related morbidity and mortality, so that in relative terms illegal drugs may not be much more important.

Yet there are other, distinctive and important problems associated with illegal drugs. Alcohol is comparable to cocaine in its individual criminogenic consequences. Of those sentenced to jail terms in 1989, 29 percent reported being under the influence of alcohol (and not drugs) at the time of the offense, compared to 15 percent reporting being under the influence of drugs alone; another 12 percent reported being under the influence of both.⁵¹ However, the high price of cocaine and the extensive illegal markets associated with it have engendered crime and violence that have sources other than the direct effect of the drugs themselves. For example, Goldstein found that the majority of drug related homicides in New York were the result of "systemic" violence (for example, disputes over territories or contractual disagreements) rather than of the psychoactive effect of the drug or the need to obtain money to purchase drugs.⁵² In some cities it is claimed that half of all homicides are drug related, though the criteria used to make the classification are quite murky. Moreover, the earnings from drug markets are believed to have been important in increasing the lethality of guns used in urban crime. That lethality may have contributed to the rise in killings of innocent bystanders.

The spread of HIV through needle sharing and other drug related behaviors (such as the extreme promiscuity of crack users) is another hard-to-value consequence of drug use.⁵³ Over one-quarter of AIDS cases include intravenous drug use as a primary risk factor and that percentage is rising. Curiously, though, in most of Western Europe, a concern with AIDS has been a principal influence on drug policy; in the United States it has been treated as almost a separate policy

arena.⁵⁴ In particular, it has not been given much attention in the debates with which this paper is concerned.

In the last few years, a great deal of attention has been given to the phenomenon of "crack babies," who are severely damaged by the cocaine use of their mothers during pregnancy. From an official high of 375,000 in the first *National Strategy*, the estimated number of babies annually affected by mother's drug use has fallen to 30,000 to 50,000. Moreover, it is no longer so clear that the damage suffered by most of these babies is very long-lasting. The problem is an emotionally very troubling one but may be rare in most populations.

Corruption is another cost associated with drug prohibition and its enforcement. Though there are spectacular and troubling instances of such corruption, such as that involving the homicide squad in the Miami Police Department in the mid-1980s and the more recent convictions of numerous deputies in the Los Angeles Sheriff's department, the revealed corruption seems fairly opportunistic and small scale, certainly when compared with that surrounding the enforcement of gambling laws in the 1940s and 1950s.⁵⁵

It is difficult then to say much about the real social costs of drug use and abuse. Violence, AIDS, corruption, and crack babies are all important and distinctive consequences of drug use under current conditions. There is enough of each of them to make understandable the public panic of the late 1980s. They have all become familiar enough to make equally understandable the declining concern of the last two years. That latter effect has been hastened by the fact that the most visible effects are highly concentrated in inner-city communities.

Knowing the scale of the social costs generated by drugs is important for determining what society should be willing to sacrifice in order to attain the goal of reduced use and abuse. Our inability to provide meaningful measures, along with the visibility and drama of illegal drugs, facilitates the task of those who would have the nation become harshly punitive.

THE CONSEQUENCES OF TOUGHNESS

To what extent can it be shown that reductions in drug use have been accomplished by the general toughening of society's approach to drug control? What are other negative consequences of toughness?

Unfortunately, discussion of these issues must be highly speculative since there is little research on which to draw.

The punitive approach should reduce drug use and abuse by making drugs more expensive and/or less accessible. This will drive addicts into treatment and discourage adolescents from initiating use. Intense enforcement should also increase disapproval of drugs, which will lead current users to desist earlier. The available evidence suggests that intensified enforcement has had modest success in raising drug prices and has not reduced already limited access for the middle class. Disapproval of drug use has increased, and that may well have reduced initiation, but it is unlikely that this disapproval is a function of enforcement stringency.

It is even harder to determine the costs of heavy enforcement, in other than budgetary terms. Drug enforcement bears particularly heavily on the African-American population. Large numbers of young poorly educated males are being locked up for long periods in institutions that do little to rehabilitate them. Tough enforcement may also exacerbate various harms of drug use.

The latter brings us to the issue of harm reduction, the European term for the more pragmatic approach to drug problems that takes account of the fact that goals of drug control can conflict with other social goals. The concluding part of this section describes what that approach entails, how (and why) it has been implemented elsewhere, and its possible application in the United States.

Prices, Attitudes, and Prevalence

Price is determined by the interaction of supply and demand. If the demand for cocaine was declining in the second half of the 1980s, as suggested by the surveys, the rising numbers entering treatment and increasing imprisonment rates, then, absent tougher enforcement, prices might have been expected to fall during that period. In fact we observe a complex pattern, with retail cocaine prices declining until 1988 and then rising for the next two years.

The failure of cocaine prices to collapse may be evidence of the effectiveness of stringent enforcement. Certainly the margins for different actors in the trade remain high and, if 1988 District of Columbia data are any guide, provide substantial wage levels (approximately \$30 per hour for low level participants in 1988). But the price increase that has been achieved is surprisingly modest; late 1990

prices were perhaps 25 percent above their 1988 nadir and close to their levels of 1986 in nominal dollars. This may reflect a growing correlation between selling and heavy use. Adult cocaine retailers are frequent users themselves; if a significant portion of their earnings from this activity go to support their own consumption, then enforcement risks will have less effect on prices.

Marijuana seems to represent more of a success for enforcement. Its price is sharply higher than ten years ago, even after adjusting for potency increases and inflation. Interdiction may well have played a role; Colombia, the low cost producer of marijuana, no longer services the US market, as a consequence of increasingly effective interdiction. The primary sources are Mexico and the United States itself, both of which are very high cost producers. Moreover, the price increase has occurred over a period during which all the indicators point to a substantial decline in demand, making even clearer the impact of enforcement.

There is only one measure of availability, which comes from the High School Senior Survey. Respondents are asked whether it would be "easy," "very easy," etc. to get a particular drug. In 1980, 48 percent said that it was easy or very easy for them to get cocaine; by 1990 the figure was 59 percent. It declined for the first time in 1991, perhaps reflecting the falling demand among the seniors; with markedly fewer buyers in this population, the market may work less smoothly. In any case, if availability is a measure of enforcement success, then it certainly has lagged the increasing toughness by a long time. Marijuana availability as measured in the same survey, has remained essentially unchanged since the survey began in 1975; each year 80 to 85 percent report that marijuana is readily available or available.

These data make it difficult to evaluate enforcement success. In the legal market, where cocaine is available as a local anesthetic, it sells for \$4 per pure gram, compared to the \$130 on the streets. It is not readily available for many segments of the population. Marijuana prices are high by historical and international standards; indeed high enough to perhaps encourage more use of other drugs, such as alcohol and cocaine. The question is whether less rigorous enforcement, with fewer dealers incarcerated, would much reduce price or increase availability.

A striking feature of the general population surveys over the 1980s was the changing attitude toward both the dangers and perceived popularity of drug use. Whereas in 1980, only 31 percent of high school seniors believed that using cocaine once or twice was very risky, that percentage had risen to 59 percent in 1990; for marijuana the figures were 15 percent in 1980 and 37 percent in 1990. The responses stressed health dangers rather than legal dangers.

Fewer respondents also saw drug use as the norm. Whereas in 1980, 76 percent disapproved of using cocaine once or twice, the 1990 figure was 92 percent. The most sophisticated analysis of the high school senior survey data has found that it is these attitudinal changes which best explain declining drug use.⁵⁶

As mentioned earlier, the evidence suggests that drug use has declined more sharply among those who have graduated from high school than those who have not. At the same time, it appears that enforcement risks have increased more for the less educated. It may well be that the more educated have greater sensitivity to the threat of arrest but the evidence is against enforcement as the primary engine for reduced drug use.

Incapacitation

Toughness works through incapacitation of sellers and users, as well as through the effect of deterrence on prices. Locking up sellers should raise the price of drugs by removing those who were the most willing to be dealers. On the other hand, locking up users should lower the price. Even if they use drugs while in prison, they are likely to use less; urinalysis programs for prisoners show very low use rates generally. Thus incapacitation can have ambiguous effects on prices, depending on the composition of the imprisoned population.

We have already seen that an increasing number of drug sellers were locked up during the second half of the 1980s. There was an even larger rise in the number of drug users incarcerated.

Over the second half of the 1980s there was a dramatic increase in the number of prison and jail inmates, continuing a trend that goes back to the mid-1970s. Between the end of 1985 and the end of 1990, that figure increased from 750,000 (including federal, state, and local correctional facilities) to 1,200,000. The incarcerated population became richer in drug users over that time; in 1988 nearly one-third of those sent to state prison were convicted of drug

TABLE 3. Race characteristics of arrestees

	1980	Percent Black	
		1985	1990
All Offenses	24.5	26.6	28.9
Crime Index	32.8	33.7	34.4
Drug Abuse	23.6	30.0	40.7

Source: *Uniform Crime Reports*.

offenses, compared to only 23 percent in 1986. Moreover, the data from local urinalysis programs suggests that the percentage of those imprisoned on nondrug charges who were drug users also rose. Taking account of both the increasing population of prisoners and the rising share that were drug users, perhaps a total of 450,000 additional drug users were removed from the population that might be involved in regular use or selling of drugs.⁵⁷

What are the effects of this increase? In the context of an estimated 2 to 3 million frequent drug users, that is a substantial change and may do much to explain the decline in various indicators, including both DAWN and DUF. That is, declines in the numbers of persons showing up in emergency rooms for drug related problems or in the percentage of arrestees testing positive for drugs may reflect not just declines in drug using behavior but also the incapacitation of large numbers of drug users. The gains then are contingent on continued incarceration, given the lack of effective treatment in most prison facilities.

Other Consequences

A standard charge against the war on drugs is that it is racist and has led to a serious erosion of civil liberties. It is certainly true that African-Americans make up an extraordinarily high proportion of those charged with drug offenses, even when compared to their proportion in criminal offenses generally or to their share of the population of frequent drug users. That does not imply racism on the part of police or courts but it does point to the possibility of selective enforcement.

Table 3 provides data on the high and growing fraction of drug arrestees who are categorized as Black in the Uniform Crime Reports.

That share has increased dramatically over the ten years from 1980 to 1990, from less than one-fourth to more than two-fifths. The

percentage has risen much faster for drug offenses than for others, including the more serious (represented by "Crime Index" offenses).

The emphasis on crack seems to have exacerbated this tendency. For example, the Minnesota legislature in 1989 raised the maximum penalty for possession of 3 grams of crack to twenty years; the same quantity of cocaine powder involved a maximum of five years. As it turned out, 96.6 percent of those charged with crack possession were African-American; for powder cocaine the figure was about 20 percent. The Minnesota Supreme Court overturned the statute for that reason in 1991.⁵⁸

The high and rising drug arrest rates for African-Americans represents another dilemma for drug policy. It is in poorer sections of large cities, with high percentages of young African-American males, that the problems of disorder and violence surrounding drug distribution are most acute. These are the communities that have the greatest need for active drug enforcement. Yet that enforcement, responsive to community concerns, results in the incarceration of alarmingly high percentages of young males from the same communities.

This brings us to another concern, namely that those who are locked up are unimportant figures in the drug trades and that their sentences are too severe for the crime, particularly when prisons are regarded as more likely to worsen an inmate's behavior than to rehabilitate him. The contention about the role of those locked up is almost irrefutable because of the highly pyramided nature of the drug trade. Cocaine enters this country in 100 kilogram lots and sells in 1 gram units; under reasonable assumptions about how many others a wholesale dealer is willing to transact with, there are about 1,000 retailers for each importer. Thus most of those who are locked up must be retailers and their support personnel. There simply aren't 100,000 significant figures in the cocaine trade; indeed, there probably aren't more than 10,000 whose removal would make the trade go somewhat slower.⁵⁹

Those locked up receive long sentences now, particularly at the federal level. The expected time served for conviction on a drug trafficking offense in federal court is over six years. Though federal courts confront the highest level dealers, they also sentence numerous minor agents of these dealers, such as the Colombian sailors who transport cocaine from that country. The sentences received by these

agents are not light. Indeed, a horrible irony of the existing federal sentencing guidelines is that the only mitigating circumstance for shortening of the mandatory sentences is effective cooperation with the prosecutor. Unimportant agents such as sailors have little to offer, whereas the principal figures in seller networks can, if they choose, provide valuable information.

At the state level the average sentences are not particularly long by contemporary US standards but as we saw above, about 90,000 persons received sentences of at least one year for drug offenses in 1988. At a time of overcrowded prisons, even one uncomfortable with the level of incarceration in the United States must ask whether the space could not be allocated more sensibly for more serious offenses.

One response to this is that those sentenced for drug offenses are also involved in more serious offenses; the drug selling is merely a marker for these other crimes. Little data are available on this matter. In the District of Columbia in a sample of drug dealers on probation in 1988, only 5 percent reported a violent offense in the previous six months. Indeed, drug selling in that sample looked very much like a substitute for other kinds of income generating (and sometimes violent) crimes.

The issue here is that of the seriousness of the offense. Legislatures have been impressed by claims that drugs cause great harm and have consequently demanded that the criminal justice system treat this as a serious offense. As always, it is a question of emphasis and allocation of resources but I confess that it is not clear to me that marijuana selling, or even possession with intent to distribute cocaine, should necessarily lead to lengthy incarceration, particularly at a time when punishment capacity is stretched so thin. That so many of those being locked up in state prisons and local jails for drug offenses are African-Americans makes it particularly important that we judge whether this incarceration is necessary.

Moreover, there are other harms that may be exacerbated by tough enforcement. Frequent harassment of street drug sellers increases the incentives to use violence for the maintenance of market share. More variability in the purity of heroin, resulting from occasional large seizures, may cause more overdoses. Stringent enforcement has raised marijuana potency, while head shop laws

prevent marijuana users from using water pipes; marijuana is consumed in the most harmful possible manner.

The list of conjectured harms from intense enforcement can be extended. How significant each of them is and what they amount to in the aggregate is impossible to even guess at. I believe though that they are troubling enough that one needs to consider whether there is an alternative approach to drug control that takes them into account.

Harm Minimization and Aggressive Owls⁶⁰

Illicit drug use has become a prominent issue in much of Western Europe in recent years. For example, a survey of popular perceptions of the principal public health problems of the nations of the European Community found that in almost all of them illicit drugs was one of the top three concerns, always ahead of alcohol.⁶¹ In four countries it was identified as the leading health problem. Deaths from drug use, almost exclusively involving heroin, have increased rapidly in Germany, Italy, and Spain. Switzerland, the south of France, Italy, and Spain have HIV epidemics dominated by intravenous drug users.

Despite these concerns, the reality and rhetoric of drug policy in most of Western Europe is very different from that in the United States. The crime consequences of drug use are given far less attention, though property crime is often believed to be substantially raised by drug addiction. The health consequences dominate discussion in most of Europe, though that has led to only a moderate hatching of doves. Syringe exchange schemes, scarcely permitted even on a pilot basis here, have become common in Britain, the Netherlands, Italy, and the German cantons of Switzerland. Spain and the Netherlands, with very different social policies toward drug use generally, have given the criminal law a minor role in dealing with drug users.

The discussion of drug policy in Europe, outside of Scandinavia, is dominated by debate about harm minimization rather than minimizing the prevalence of drug use. Cannabis use, outside of Scandinavia, is almost entirely ignored. The emergence of AIDS has been the catalytic force. As the Advisory Council on the Misuse of Drugs in Great Britain said in a 1988 report, "HIV is a greater threat to public and individual health than drug misuse."⁶² Policy measures that

might increase the extent of drug use but lower the prevalence of HIV are likely to be endorsed under this hierarchy of values.

The policy view extends though to more than just AIDS related matters. If tough enforcement lessens the likelihood of drug addicts seeking treatment, then less stringent enforcement might be preferred. Some Europeans even talk about police making harm minimization choices in their tactics, for example using selective enforcement to focus on heroin injectors rather than heroin smokers, since smoking poses lower risk of both HIV and hepatitis B.

My colleagues and I conjecture that the difference in policy tone between Europe and the United States is importantly affected by the much lower prevalence of violence associated with drug distribution and use in Europe. That in turn may reflect simply the lower level of violence in European crime generally. Without that violence it is much easier to see health measures as the most appropriate response.

How successful have harm minimization policies been? Precisely because they are more concerned with reducing harms than drug use, they cannot be judged simply by the extent of drug use that they have engendered. The Dutch make a reasonable case that their very conscious adoption of the harm minimization approach has permitted their addicts to lead healthier and less crime ridden lives than their counterparts in the United States. However, the much more generous income support schemes available to prime age males in Holland may be more significant here than any facet of targeted drug policy.

Harm minimization is not a policy but a framework for making decisions which considers that drug policy, particularly related to application of the criminal law, has effects on other aspects of the quality of life. The one instance of the application of harm minimization in American drug policy is in the developing consensus that drug abusing pregnant women should not be subject to criminal prosecution for the risks that they pose to their babies.⁶³ The belief that such prosecutions would reduce the probability of use of prenatal care seems to have played an important role in this consensus.

However, most US owls currently do not take the harm minimization approach. Their acceptance of the need for vigorous enforcement, which precludes consideration of the negative consequences of

that enforcement, has made their contribution to drug policy discussions of limited value so far. We now turn to the sources of their timidity.

THE POLITICAL DYNAMICS OF DRUG POLICY

The success of the hawks is in part a function of how the drug problem has been characterized in the United States. So long as crime is the dominant part of the public image of the problem, then law enforcement is plausibly the most appropriate response. Drugs are produced by evil syndicates (the Medellin cartel), sold by ruthless gangs who kill innocent bystanders and generate fabulous incomes for the sellers (media stories about inner-city kids earning \$1,000 a day⁶⁴) operating in settings that generate neighborhood fear and disorder (street corners and crack houses); so runs the standard version of the problem.

That growing association between crime and drug use in popular perception reflects the reality of changing patterns of drug use reported earlier. As young, poorly educated males become a larger part of the population that is heavily involved with drugs, so drugs and crime have truly become more strongly associated. In this sense we are reliving the experience of the early twentieth century United States with respect to opiates. Courtwright argues that the total number of opiate addicts declined through the first quarter of this century but that the decline was much more pronounced among the middle class, where the addiction was generally associated with medical treatment.⁶⁵ The recreational user/addict, typically less educated, and more frequently a criminally active young urban male, was less likely to drop out of opiate use as disapproval increased and more restrictions were placed on access to drugs. Thus opiate addiction came increasingly to be seen as a behavior leading to crime. That helped create a climate of opinion in which criminal prohibitions on use and strict penalties against sellers received broad support; the Harrison Act of 1914 attracted little controversy.

The media reporting of the "drug crisis" has undoubtedly helped here. An analysis of prime-time network news bulletins in 1988 found that illegal drugs were the second most frequently mentioned item. Most of those news stories dealt with the drama of crime associated with drugs; few of the stories concerned drug treatment or

TABLE 4. Preferences for different drug control programs

PROGRAM	Percent Favoring Program		
	White	Nonwhite	Total
Interdiction	19	42	34
Prosecution/Arrest	17	9	12
Education/Prevention	41	29	33
Treatment	23	21	22

Note: Responses to question: "Which program should receive the most money and effort in the fight against drugs?"

Source: *The District of Columbia 1990 Public Opinion Survey of Drug Abuse and Crime*

prevention. The standard media mention of the issue is drugs and crime, rather than addiction to psychoactive substances of varying legal status.

All this has made it difficult for owls or doves to win the debate. No member of Congress has had political problems as the result of pressing for tougher penalties or expanded enforcement. The risks in arguing for more lenient punishment of drug users or dealers are clearly very serious, in face of popular opinion inflamed to believe in the need for toughness. It is depressing to note that a 1986 "Sense of Congress" resolution demanding the additions to the federal drug control budget be split evenly between enforcement and demand-side programs has led only to a modest shift in the balance of funding, even as federal drug budgets have rapidly escalated.

There is not a lot of good survey research on public opinion with respect to drugs, in particular about what people perceive to constitute the drug problem. The most relevant research survey was carried out in the District of Columbia in 1990 and showed a lack of faith in local enforcement. Respondents were asked to rate four kinds of programs in terms of their importance for controlling drug abuse. *Table 4* presents the results for both whites and nonwhites.

Three features of these responses are striking. The first is the relatively greater faith in interdiction (stopping drugs from coming into the country) as compared to enforcement at the local level. That reverses what I take to be the growing consensus among those who analyze drug enforcement. The second is the modest support for treatment, though a majority of respondents in the survey did believe that drug treatment was the appropriate sentence for arrested drug users. Third, whites and nonwhites have notably different attitudes.

Nonwhites are more for enforcement than whites; 51 percent of nonwhites chose one of the two enforcement options, compared to 36 percent of whites. But the nonwhites more strongly prefer that enforcement take the form of interdiction rather than arrest and prosecution in their own community. A higher percentage of whites show faith in education and prevention. But demand-side programs do get strong support from both whites and nonwhites; overall a bare majority favor such programs. Thus there may be more of a base of public opinion to support less punitive approaches than is currently believed.

CONCLUSION

A particularly disturbing aspect of the current situation is the difficulty of dismantling the punitive apparatus that has been assembled since the mid-1980s. With declines in drug involvement among American youth likely to continue for some years, the justification for the draconian sentences at the federal level, with their personal and fiscal costs, will be even harder to sustain. The problem is increasingly that of the adult drug addicts who became dependent during the heroin epidemic of 1967–1973 or the cocaine epidemic of the 1980s.

Yet the political forces are not favorable to changing this bent in the near future. The doves are likely to be pushed back to the fringe status they held until 1987. Their appearance on center stage was fueled by the pervasive sense of despair in the late 1980s that the nation's drug problem was continuing to worsen despite tough and intrusive control. That sense of despair has lessened, reflecting at last the great decline in initiation into drug use among the vast middle class of the nation. Notwithstanding the rhetoric of liberals and conservatives alike that it is "everybody's problem," drugs now seem to be moving to another entry on the long list of ills that emanate from the inner city and poor minority populations in particular. Hawkishness may not have been the primary cause for the diminution of the problem but nonetheless the diminution occurred during the hawks' ascendancy, so that hawks find it easy to claim that "toughness worked." Those who argue that the problem also worsened during the earlier ascendancy of the hawks will find a small audience. Calls for major changes in policy, in particular for the legal

availability of what have come to be seen as "devil drugs," no matter how stringent the associated regulation, will also have limited appeal.

Owls may do better than doves. The imagery of war ought to work in their favor; victory is often followed by a period of humanitarian outreach by the winning side, an effort to help the casualties of war. The continuing decline in initiation among America's youth will make ever clearer that the drug problem is mostly the dangerous behavior of a relatively small number of adults, caught in the cocaine epidemic of the 1980s. Maybe locking them up will start to look more expensive and less attractive than developing better quality health and social services aimed at reducing their drug use and at improving their social functioning. Owls, even if their message lacks the simplicity and clarity of the competing birds, may yet come to dominate the aviary.

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ENDNOTES

- ¹Punishing drug users should reduce demand; to that extent the "supply-sider" label has an element of exaggeration.
- ²This debate was given its most explicit formulation in the congressional debate on the 1988 Omnibus Anti-Drug Control Act.
- ³Joseph Nye, Graham Allison, and Albert Carnesale, "Analytic Conclusions. Hawks, Doves and Owls," in Allison, Nye, and Carnesale, eds., *Hawks, Doves and Owls: An Agenda for Avoiding Nuclear War* (New York: W.W. Norton, 1985), 206-22.
- ⁴Nye et al.'s tripartite division added owls to the conventional hawks and doves. Whereas hawks believed that war could be avoided only if both sides have enough weapons to impose unacceptable damage on the other and doves believed that disarmament was essential to prevention of nuclear war, owls believed in confidence building measures and other elements of process, rather than the scale and comparability of nuclear arsenals as the key to peace.
- ⁵The most appropriate measurement of treatment success is a vexed issue. Does one include the large number of persons who drop out early in a particular program,

perhaps because they decide that other programs are more suitable? What constitutes success: abstinence or improved social functioning? The authoritative review is Dean Gerstein and Hendrick Harwood, eds., *Treating Drug Problems* (Washington, D.C.: National Academy Press, 1990).

⁶The argument is made most explicitly in reports of the Office of National Drug Control Policy. See *National Drug Strategy* (1989 and 1990) and *White Paper on Drug Treatment*, 1990.

⁷I shall not deal with the fringe dove movement that emphasizes the positive effects of psychoactive drugs. Thomas Szaz is probably the leading intellectual evangelist of this group; see Thomas Szaz, *Ceremonial Chemistry: The Ritual Persecution of Drugs, Addicts and Pushers* (Garden City, N.Y.: Anchor Books, 1974).

⁸Ethan Nadelmann, "America's Drug Problem," *Bulletin of the American Academy of Arts and Sciences* XLV (3) (December 1991): 24-40.

⁹Most acknowledge an exception for children; criminal prohibitions for the sale to children is a staple of dove advocacy.

¹⁰Recent statements of this pessimism include Peter Andreas, Eva Bertram, Morris Blachman, and Kenneth Sharpe, "Dead-End Drug Wars," *Foreign Policy* (85) (Winter 1991-1992); and *The Andean Initiative: Squeezing a Balloon*, Report prepared by the staff of the House Judiciary Committee's Subcommittee on Crime and Criminal Justice, 24 February 1992.

¹¹Gerstein and Harwood, *Treating Drug Problems*.

¹²Some colleagues have argued that the imagery is loaded; after all, owls are generally thought of as wise. My own image of owls is more mixed, being derived from childhood readings of Winnie-the-Pooh, in which Owl is indeed learned (he can misspell long words) but unrealistic and self-deluded. The owls of Nye, Allison, and Carnesale exhibit some of the latter qualities.

¹³The most refined discussion of these matters is Mark Kleiman, *Against Excess: Drug Policy for Results* (New York: Basic Books, 1992).

¹⁴A point made by James Q. Wilson, "Drugs and Crime," in Michael Tonry and James Q. Wilson, eds., *Drugs and Crime* (Chicago: University of Chicago Press, 1990).

¹⁵For example, there are few cities or metropolitan areas with data on the prevalence of drug use in the general population, so that it is impossible to model the effect of policy variables on the extent of drug use. Other proxies, such as the number of deaths related to drug use, turn out to be unsatisfactory for this purpose.

¹⁶To estimate the share of criminal justice expenditures accounted for by drug enforcement, I separated police, courts, and corrections. The share of police expenditures on the drug "account" was measured by the ratio of drug selling arrests to Part I arrests plus drug selling arrests. For courts it was the ratio of drug felony convictions to all felony convictions. Finally, for prisons I used the share of all commitments to prison that were for drug offenses. These are all crude estimates. The only systematic effort to measure state and local expenditures on drug enforcement by police, Gerald Godshaw, Ross Pancoast, and Russell Koppel, *Anti-Drug Law Enforcement Efforts and Their Impact* (Bala Cynwyd,

Pa.: Wharton Econometric Forecasting Associates, 1987), showed an even higher share of the police expenditures going to that effort in 1985 and 1986.

¹⁷It is striking just how state and local governments have succeeded in keeping the public debate focused on the federal budget allocation. State and local expenditures on treatment and prevention have been growing very slowly compared to those of the federal government, even though these services are delivered almost exclusively by the lower levels of government.

¹⁸See Joan Petersilia, Joyce Peterson, and Susan Turner, *Intensive Probation and Parole: Research Findings and Policy Implications* (Santa Monica, Calif.: RAND Corporation, 1992).

¹⁹*New York Times*, 22 March 1992.

²⁰Richard Doblin and Mark Kleiman, "Marijuana as an Antiemetic Medicine: A Survey of Oncologists' Experiences and Attitudes," *Journal of Clinical Oncology* 9 (July 1991).

²¹"Out of Joint," *New Republic*, 15 & 22 July 1991.

²²A more detailed account is given in Reuter, "On the Consequences of Toughness," in Krauss, Melvyn, and Edward Lazear, eds., *Drug Policy in America: The Search for Alternatives* (Stanford, Calif.: Hoover Institution Press, 1991).

²³The Uniform Crime Reports system of the FBI combines heroin and cocaine arrests into a single category. It is generally believed that the increase in this category throughout the 1980s was dominated by an increase in cocaine related arrests.

²⁴Bureau of Justice Statistics, *Felony Sentences in State Courts* (Washington, D.C.: 1989, 1990).

²⁵Since these possession charges were prosecuted as felonies, they are presumably possession with intent to distribute rather than simple possession offenses, which in most states are misdemeanors only.

²⁶The declining average time served probably reflects two phenomena. The first is simply prison overcrowding, which has led to a reduction in the share of sentence actually served. The second is that the rapid increase in the number of drug offenders receiving prison sentences means that some are now being imprisoned for less severe offenses.

²⁷All of these dispositional data, both national and Californian, bear on felonies, primarily related to distribution and/or manufacture. There are literally no published data concerning the sentences received by those arrested on simple possession charges.

²⁸The household survey produces an estimate of ten million current users (i.e. reporting at least one use within the prior thirty days) in 1990. Allowing for one-third underreporting gives a total of fifteen million.

²⁹Peter Reuter and Mark Kleiman, "Risks and Prices: An Economic Analysis of Drug Enforcement," in Norval Morris and Michael Tonry, eds., *Crime and Justice: A Review of Research* 7 (Chicago: University of Chicago Press, 1986).

³⁰Peter Reuter Robert MacCoun, and Patrick Murphy, *Money From Crime: A Study of the Economics of Drug Dealing in Washington, D.C.*, RAND: R-3894-RF (Santa Monica, Calif.: June 1990).

- ³¹Mark Kleiman sensibly notes that this kind of statement ignores the prevalence of alcohol use. It may well be that the average hours of intoxication per citizen is no higher in the United States than in nations, such as France, where alcohol is more widely abused. Without denying the relevance of that measure, there are distinctive problems arising from use of illegal substances and it is worth considering differences among societies in the extent of that use.
- ³²The federal government defines the use of an illicit drug as drug "abuse." Both medicine and ordinary language make a distinction between use and abuse or dependence. Though the latter two terms have different origins and formal definitions, they will be used interchangeably here to reflect levels and patterns of drug consumption that create health and/or behavioral problems to the user. None of the existing data systems allows for accurate measurement of the prevalence of one rather than the other.
- ³³During the 1980s, the National Institute on Drug Abuse funded three surveys of drug use in the household population; that survey has been conducted annually since 1990. Each year since 1975 the University of Michigan has surveyed a sample of approximately 16,000 high school seniors.
- ³⁴"Thirty years ago smoking was not associated with social class. It is now. In 1980, a quarter of professional men smoked, a third of white collar men and almost half of blue collar men..." Thomas Schelling, "Addictive Drugs: The Cigarette Experience," *Science* 255 (24 January 1992): 430-31.
- ³⁵Nor is this simply explained by higher drop out rates among African-Americans, which would suggest that the high school senior population was a more select group within their age cohort when compared to the white seniors. Drop-out rates in recent years have been almost equal for the two populations.
- ³⁶That difference is particularly striking since the percentage of incarcerated males aged 26-34 is much higher for African-Americans than for the rest of the population. The incarcerated males are much more likely to be drug users than the nonincarcerated; if the two ethnic groups have the same prevalence rate overall, the nonincarcerated African-American rate should be lower than the white race. Note that these are all unadjusted rates; the differences should not be ascribed to ethnicity but may be a function of urbanness, education, employment rates, etc.
- ³⁷In 1991, the survey for the first time included homeless in shelters.
- ³⁸The DAWN reports include data on the patient's motive for using the drug. In 1983, 42 percent reported that they took cocaine for its psychic effects (i.e. for pleasure) and 47 percent reported dependence. By 1989, 63 percent of those episodes involving cocaine were classified as drug dependence and for only 28 percent was "psychic effects" the motive for taking the drug.
- ³⁹The number of DAWN cocaine mentions flattened out in 1988 and then fell by about 25 percent between the second and third quarters of 1989. The numbers then rose over the following two years, close to their prior peak. Little effort has been made to understand these changes, which may be affected by shifts in emergency room policies during an urban health care financing crisis, or by alterations in the behavior of addicts rather than by their numbers.

- ⁴⁰For a severe criticism of those estimates, see Reuter, "The (Continued) Vitality of Mythical Numbers," *The Public Interest* (Spring 1984). A recent review of the literature leaves me with little reason to change that critique.
- ⁴¹Italy may have a higher rate; there are sharply conflicting estimates of the total number of addicts. If one trusts numbers of unknown provenance from distant lands, it is possible that Pakistan and Thailand have higher rates of heroin addiction. See the State Department's annual *International Control Strategy Report*.
- ⁴²The figures on age composition refer to unweighted data, which are only available through 1989. For purposes of describing long-term trends, the new weighted data are not appropriate.
- ⁴³The evidence for a new heroin epidemic is presented in BOTECH Analysis Corporation, *Heroin Situation Assessment*, a Working Paper prepared for the Office of National Drug Control Policy, 10 January 1992.
- ⁴⁴See the MacNeil/Lehrer NewsHour, September 1990; debate between ONDCP Director, William Bennett, and Senator Joseph Biden.
- ⁴⁵Eric Wish, "U.S. Drug Policy in the 1990s: Insights from New Data on Arrestees," *International Journal of Addictions* 25 (3A) (1990-1991): 377-409. See also Senate Judiciary Committee, *Hard-Core Cocaine Addicts: Measuring and Fighting the Epidemic* (Washington, D.C.: 1990).
- ⁴⁶Robert Tillman, "The Size of the 'Criminal Population': The Prevalence and Incidence of Arrests," *Criminology* 25 (3) (Fall 1987).
- ⁴⁷Reuter, MacCoun, and Murphy, *Money from Crime*.
- ⁴⁸The most recent is Dorothy Rice, Sander Kelman, Leonard Miller, and Sarah Dunmeyer, *Economic Costs of Alcohol Abuse, Drug Abuse and Mental Illness*, 1985 (Rockville, Md.: Alcohol, Mental Health and Drug Abuse Administration, 1990).
- ⁴⁹To get a sense of this, the reader should consider what would happen to the value of her house if the crime rate in the surrounding area reached a figure comparable to that on Capitol Hill in Washington, D.C.
- ⁵⁰A better measure is Years of Life Lost (YLL) which takes account of how premature a death is; for example, the average YLL is higher for alcohol than cigarettes, since lung cancer typically strikes its victims in late middle age, while many alcoholics die in early middle age. DAWN data suggest a much higher average YLL (i.e. earlier age of death) for illicit drugs but even that would not raise the significance of illegal drugs to that of either alcohol or tobacco.
- ⁵¹Bureau of Justice Statistics, *Profile of Jail Inmates, 1989* (April 1991).
- ⁵²Paul Goldstein, H.H. Brownstein, P.J. Ryan, and P.A. Belluci, "Crack and Homicide in New York, 1988," *Contemporary Drug Problems* (1990).
- ⁵³Medical costs for treatment and lost wages capture only the direct costs; the increased fear associated with sexual intercourse is an instance of those indirect consequences that seem both difficult to value and potentially very important.

- ⁵⁴See the recent complaints by the National Commission on AIDS about lack of drug treatment capacity, *The Twin Epidemics of Substance Use and HIV* (1991), 7-10.
- ⁵⁵This is discussed in more detail in Reuter, "Police Regulation of Illegal Gambling: Frustrations of Symbolic Enforcement," *Annals of the American Academy of Political Science* (July 1984).
- ⁵⁶Jerald G. Bachman, Lloyd D. Johnston, and Patrick M. O'Malley, "Explaining the Recent Decline in Cocaine Use Among Young Adults: Further Evidence that Perceived Risks and Disapproval Lead to Reduced Drug Use," *Journal of Health and Social Behavior* 31 (June 1990).
- ⁵⁷If 45 percent of the 1985 incarcerated population were drug users and the figure for 1990 were 65 percent, then the total number of drug users locked up rose from about 350,000 to 800,000. Both percentages seem fairly conservative.
- ⁵⁸*Washington Post*, 14 December 1991, A10.
- ⁵⁹This is not to say that the more senior figures are at low risk. Indeed, it seems unlikely that one could operate as long as five years in most American cities in the high levels of the drug market without facing substantial risk of long term imprisonment.
- ⁶⁰This section draws on ongoing work being done in collaboration with James P. Kahan and Robert MacCoun.
- ⁶¹Public Opinion in the European Community, *Eurobarometer*, December 1989.
- ⁶²The Advisory Council on the Misuse of Drugs, *Report: AIDS and Drug Misuse* (London: HMSO).
- ⁶³I owe this example to Douglas Besharov.
- ⁶⁴See for example the alarmist cover story in *Time*, 9 May 1988, 21-33.
- ⁶⁵David Courtwright, *Dark Paradise: Opiate Addiction in America Before 1940* (Cambridge: Harvard University Press, 1982).

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