

Drug Laws and the U.S. Criminal Injustice System

What political factors contributed to the development of a criminal-justice-based drug policy?

Domestically, U.S. drug policy is fueled by historical bias against people of color used to justify their disproportionate presence in the penal system. Despite the fact that involvement with drugs has proven to be consistent across racial lines, many punitive drug laws were inspired by the notion that certain substances were commonly used by racial minorities. Such was the case with opium and Chinese immigrants, cannabis and Mexicans, and cocaine and African Americans.

What is the relationship between racial profiling and drug law enforcement?

There is a self-perpetuating, cyclical quality to the treatment of Blacks and Latinos in the U.S. criminal justice system. Much of the discrimination visited upon these groups stems from the perceptions of criminal justice decision-makers that (1) most drug crimes are committed by people of color, and (2) most people of color commit drug crimes. Although empirically false, these perceptions contribute to a disproportionate share of law enforcement attention to be directed at people of color, which in turn leads to more arrests of Blacks and Latinos. Street sweeps, buy and bust operations, and other police activities exacerbate the problems by targeting people in street level retail drug transactions in low-income communities (as opposed to the less visible drug activity prevalent in more affluent communities). Disproportionate arrests fuel prosecutorial and judicial decisions that disproportionately affect people of color and result in racial disparities in incarceration. The accumulated effect is to create a prison population in which Blacks and Latinos increasingly predominate, which in turn reinforces the misperceptions that justify racial profiling and punitive drug policies.

What impact have mandatory minimum drug sentencing and conspiracy provisions had on the criminal justice system?

During the 1980s, Congress and many state legislatures passed mandatory minimum sentencing and “three strikes” or “habitual offender” laws that require judges to hand out fixed sentences to people convicted of certain crimes. While the intent was to punish high-level drug offenders, such as drug kingpins and major dealers, the laws have had the opposite effect – high-level drug defendants can plea-bargain their way to reduced sentences, while low-level defendants with no information to trade for leniency are sentenced to unusually long terms. Often coupled with “truth in sentencing” laws and laws abolishing parole release systems, these policies resulted in a dramatic increase in actual time served by drug offenders.

Additionally, the enactment and application of conspiracy provisions for drug offenses have made it possible to convict any individual based on the entire volume of alleged drugs within a drug-supply network, even if that particular person knew of and was involved in only a small part of the enterprise.

According to a study by the RAND Corporation, “three strikes and “truth-in-sentencing” laws have had little significant impact on crime and arrest rates. According to the Uniform Crime Reports, states with neither three strikes nor truth-in-sentencing laws had the lowest rates of index crimes, whereas index crime rates were highest in states with both types of get-tough laws.”

How has drug law enforcement affected prison populations in the United States?

As a result of the reliance on incarceration as the principal means of responding to drugs in the United States, there are now 1.7 million people in the U.S. under correctional control for a drug offense. Blacks, Latinos and Native Americans are over-represented throughout the U.S. prison system. However, nowhere in the criminal justice system is the disparity between the arrest, detention, conviction and sentencing of people of color and Whites more brutally obvious than in the case of the “war on drugs.” The rate of drug admissions to state prison for Black men is thirteen times greater than the rate for white men. A recent report by Human Rights Watch found that while drug use is consistent across all racial groups, Blacks and Latinos are far more likely to be arrested and prosecuted and given long sentences for drug offenses. Blacks constitute 13 percent of all drug users, but 35 percent of those arrested for drug possession, 55 percent of persons convicted, and 74 percent of people sent to prison. Nationally, Latinos

comprise almost half of those arrested for marijuana offenses and Native Americans comprise almost 2/3 of those prosecuted for criminal offenses in federal courts.

How has the drug war impacted the ability of formerly incarcerated persons to reenter society?

One of the most important recent developments in the criminal justice system is the imposition of post-conviction sanctions. These sanctions, collectively known as ‘collateral consequences’ are additional legal penalties that attach to criminal convictions. These consequences are often hidden during the criminal process because they are considered to be civil, rather than criminal penalties. Over the past three decades laws and policies were enacted that restrict persons convicted of a drug offense from employment, receipt of welfare benefits, access to public housing, and eligibility for student loans for higher education. Because the drug war has been waged disproportionately in Black communities, collateral consequences, particularly those tied to drug offenses, have served as invisible bars that remain long after the physical ones are removed.

The American Bar Association released data identifying more than 38,000 punitive provisions that apply to people convicted of crimes, pertaining to everything from public housing to welfare assistance to occupational licenses. More than two-thirds of the states allow hiring and professional-licensing decisions to be made on the basis of an arrest alone. Such collateral penalties place substantial barriers to an individual's social and economic advancement. The growth of the convicted population means that there are literally millions of people being released from incarceration, probation and parole supervision every year. Black communities that bear the brunt of punitive drug policies have been devastated by the debilitating combination of mass incarceration and permanent felonization as a collateral consequence of criminal conviction.

How has the drug war undermined the political representation of people of color?

The impact that current drug policies have had on social structures and political power in Black and Latino communities has been devastating. As a result of the “war on drugs” poor communities of color have been politically weakened by laws that disenfranchise voters for felony convictions and by an economic climate that provide incentives for rural communities to embrace prisons as a form of economic development. The prevailing theory about prisons in many locales is “If we build them, they will come.”

Almost 1.4 million African American men, or 13% of Black men, are disenfranchised, a rate seven times the national average. Black men represent more than 36 percent of the total disenfranchised male population in the U.S., although they make up less than 15 percent of American males. Given current rates of incarceration, three in ten of the next generation of Black men can expect to be disenfranchised at some point in their lifetime.

Prisoners are counted for the national census as residents of the towns in which they are imprisoned, leaving their neighborhoods with diminished political power and government funding. Since population determines voting representation and the distribution of government resources, incarcerated drug offenders bring a transfer of public funds and electoral influence from their home communities, which are generally urban and often poor, to the mostly rural towns in which they are imprisoned.

What would alternative approaches to current criminal-justice-focused drug policy look like?

Affluent predominantly White suburban communities have long recognized that the drug war need not be fought only on the incarceration front. Alternatives such as drug treatment and education are mainstays of White, middle-class efforts to reduce drug abuse in their neighborhoods. A strategy centered on such demand reduction efforts makes sense: The RAND Corporation has estimated that investing an additional \$1 million in drug treatment programs would reduce by fifteen times more serious crime than enacting more mandatory sentences for drug offenders. But when it comes to the presence of drugs in poor communities of color, the response of policymakers is to build prisons rather than treatment facilities.