

RACIAL DISPARITIES ASSOCIATED WITH THE WAR ON DRUGS

A Thesis
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Submitted to the Graduate School
Appalachian State University
in partial fulfillment of the requirements for the degree of
MASTER OF SCIENCE

MAY 2012
Department of Government and Justice Studies

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May 2012

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ABSTRACT

RACIAL DISPARITIES WITHIN THE WAR ON DRUGS (May 2012)

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This research examines the harmful effects of the war on drugs with specific importance placed on racial inequalities. I explore the current drug war in an effort to present statistical observation of those arrested, sentenced, and incarcerated for drug-related offenses. As a means to better understand the racial disparities that exist within the criminal justice system, I draw upon several key theorists to lay foundation for the discussion contained herein. Upon presenting statistical data from a myriad of sources, I will explore the outcome variable of racial disparity as result of the war on drugs.

DEDICATION

This paper is dedicated to my mother, who has always pushed for me to strive for my best. Her words of wisdom have helped me through some of the most trying times of my life, and without her none of this would have been possible. I would also like to dedicate this work to the faculty of the Government and Justice Studies Department at Appalachian State University. The knowledge I have obtained during my college career will certainly stay with me forever.

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INTRODUCTION

In excess of forty years prior to the present debacle, President Richard Nixon declared drug abuse as “public enemy number one in the United States” (Frontline, 2000).

Reinventing a drug war that had been dormant since the 1930s with the creation of the Bureau of Narcotics, Nixon managed to instill enough fear into the public that drastic changes began to take place. Following suit, in 1986 President Reagan officially declared a national “war on drugs” (Frontline, 2000). Since then, the United States has spent an ever-increasing amount of time and money attempting to combat drug use and drug abuse (Robinson & Scherlen, 2007).

Since its reinvigoration under President Nixon forty years ago, the war on drugs has pervaded many facets of human life. An element that has become of paramount importance today, as it relates to the war on drugs, is the issue of race. From arrest, to sentencing, to incarceration, and on to reintegration, race has played a significant role in the war on drugs. Although the architects of the war on drugs may not have intended for the racial disparities, their actions have nonetheless left severe inequalities within the criminal justice system. Barry McCaffrey, President Clinton’s drug czar, said in 1996, “It is truly a war without a clear enemy. Anything waged against a shapeless, intangible noun can never truly be won” (Suddath, 2009). Can you possibly have a war on drugs? The answer is no; rather, it is a war on United States citizens with racial disparities as a primary component.

Given its forty year reign, it is essential to analyze the war on drugs in an effort to assess its validity. Robinson (2005) states that “the war on drugs is a phrase used to describe

the American approach to reducing drug use and abuse in the United States” (p. 311). If the war on drugs had accomplished stated goals, there would be a significant decline in drug use throughout America. It is of paramount importance to examine what the war on drugs intended to do in light of which individuals have fallen prey to its mission. More specifically, Robert Merton’s construct of unintended consequences is applicable. Merton (1936) states that the actions of people, and especially of government, often have effects that are unintended or unanticipated. With rising numbers of individuals in prisons and jails for drug-related offenses, it is evident that the war on drugs is a clear example of unintended consequences, especially in its failure to reduce drug use.

The “war on drugs” has created a bureaucratic behemoth of courts, jails, and prisons that have done little to decrease the use of drugs while doing much to create confusion and hardship in families of color and urban communities (Mauer, 2001). Inevitably, the war on drugs has managed to do more harm than good over the past several decades. In fact, Mauer (2001) notes that since 1972, the number of people incarcerated has increased five-fold without a comparable decrease in crime or drug use. Although the Obama administration has pledged to address many of these concerns, progress has been slow; in fact, in some areas it has been nonexistent (Human Rights Watch, 2011).

The highly controversial issue of fighting a war against an intangible enemy has led to the state of affairs exemplified today. As of June 2009, the United States continues to have both the largest incarcerated population (2,297,400, a decrease of 0.5 percent since December 2008) and the highest per capita incarceration rate in the world (748 inmates per 100,000 residents) (Human Rights Watch, 2011; The Pew Center on the States, 2008). Similarly, the Justice Policy Institute (2008) reports,

The United States leads the world in the number of people incarcerated in federal and state correctional facilities. Approximately one-quarter of those people held in U.S. prisons or jails have been convicted of a drug offense. The United States incarcerates more people for drug offenses than any other country. With an estimated 6.8 million Americans struggling with drug abuse or dependence, the growth of the prison population continues to be driven largely by incarceration for drug offenses (p. 1).

Given the high numbers of individuals incarcerated for drug offenses, it is necessary to reexamine the war on drugs in an effort to develop alternative methods such as rehabilitation, treatment, and reintegration. The Human Rights Watch (2010) reports that a national Angus Reid poll reveals that 65 percent of Americans think the decades long effort of the war on drugs has been a failure. Despite the federal government's claim that the drug war is working, it has proven to be another failed policy yielding serious consequences to anyone in its way, especially minorities.

METHODOLOGY

The research objective shall draw on both qualitative and quantitative research that can be found within the literature. This specific data is best suited for the present analysis, in that I shall be able to build upon an existing body of research. Supporting literature in the field is essential to consider, for it will assist in laying the groundwork for future implications that arise from findings herein. More specifically, traditional archival research shall be the primary means of collecting data. Due to time constraints during this phase of my research, obtaining primary data is unfeasible. However, in utilizing secondary data, I shall be better equipped to present the linkage between drug arrests, convictions, and punishments that arise as a result of the war on drugs, as well as the race of individuals that are being processed. In order to analyze and interpret my findings, I shall employ several theoretical perspectives as foundational constructs.

THEORETICAL FOUNDATION

This section shall focus on the key theories that can be used as foundational grounding in understanding elements of the war on drugs. More specifically, this section of analysis will incorporate several key concepts related to the criminal justice system. Conflict theory is grounded in the notion that individuals in power are making rules that govern our society, often for the benefit of themselves. From this perspective it can be argued that the powerful architects of the drug war are responsible for the racially disparate laws that are being enforced today. In constructing these laws, they ensure that the powerless groups in society are oppressed.

One way of maintaining power is through the media, which determine what the audience will see, as well as how it will be portrayed. Thus, the media are capable of promoting fear at the level of the general public, thereby sustaining the war on drugs. Expanding upon this construct, I shall explore the theoretical foundation of moral panic as impetus to the drug war. Moral panic theory will aid in efforts to exemplify how society can be moved to moral panic if they believe social order may be at risk. With this theory, I shall explore the ways in which groups of individuals demonize other groups. In addition, I shall explore Emile Durkheim's perspective that the "bad" defines the "good," and that those that see themselves as "good" resort to using the "bad" as scapegoats. Lastly, I will highlight the concept of pyrrhic defeat theory as a means to explain how those in power benefit from the failure of the war on drugs. I will briefly mention labeling theory as a means to describe the

hardships of individuals who have been stigmatized by the war on drugs. These theories will assist in laying the theoretical foundation for the remainder of the paper.

Durkheim

The notion that crime serves important functions for a society was developed by sociologist Emilé Durkheim (Reiman, 1998, p.7). According to Durkheim, societies may produce behavior that the majority wants to eliminate. In other words, crime serves a function in society to set limits and place moral worth on subjects. A community not only makes good of unacceptable behavior, but it positively needs unacceptable behavior (Reiman, 1998, p. 46). Further, Durkheim argues that crime is an essential element for society to exist in that there has never been a society absent of crime. Durkheim's theory implies that the "bad" behavior of individuals in society define the "good" behaviors, further creating differences among citizens. This view becomes the hypothesis that the American criminal justice system fails to reduce crime because a visible criminal population is essential to maintaining the "boundaries" (Reiman, 1998, p. 47).

According to Durkheim, crime is a functional aspect of society and serves many different roles. In fact, Durkheim believed that some level of crime is normal and even necessary for several reasons (Lanier & Henry, 2004, p. 237):

- Even in a well-ordered society, crime is necessary to remind the community of its values and standards
- Crime serves to create a sense of solidarity among law-abiding citizens; the criminal or crime presents an occasion to bring people together to celebrate their values by denigrating those they oppose
- Society can make moral messages about which rules are most important by adjusting the severity of punishment

The deviant individual violates rules of conduct which the rest of the community holds in high respect. When these people come together to express their outrage over the offense and to bear witness against the offender, they develop a tighter bond of solidarity than existed

earlier (Erikson, 1966, p.4). Durkheim suggests that crime performs a needed service to society by drawing people together in a common stance of anger and indignation.

Durkheim's theory exemplifies the fact that crime is necessary in order for individuals in a community to feel better about themselves for being "good." This notion clearly implies that, in order to be "good," someone must ultimately play the role of the "bad." Kai Erikson (1966) has suggested in his book, *Wayward Puritans*, that societies derive benefit from the existence of crime and thus there is reason to believe that social institutions work to maintain rather than eliminate crime (as cited in Reiman, 1998, p.45). In other words, societies may promote behavior that is contrary to the collective conscience. By maintaining crime, society is placing value on certain groups of individuals, further separating distinct social classes within society.

Linking Durkheim's theory to the war on drugs, it is evident that certain individuals within society are used as scapegoats. For instance, a disproportionate number of minorities are arrested and incarcerated each year for low-level, non-violent drug offenses. According to Durkheim, these individuals represent a subset of the population that can be viewed as being deviant. Upon distinguishing these individuals as "deviants," other members of society are unified in their actions and beliefs, further exemplifying the fact that individuals being processed for drug-related offenses are excluded from the solidified "good" group of citizens in society. Durkheim's concept is especially relevant for the race related minority population in particular.

Conflict Theory

Social conflict has been defined as "a struggle over values or claims to status, power, and scarce resources, in which the aims of the conflicting parties are not only to gain the

desired values but also to neutralize, injure, or eliminate their rivals” (Coser, 1968, p. 232). In our society, once an individual has obtained status and power, there is an inclination to maintain this power and oppress anyone that serves as an obstacle in this quest. The more powerful groups use the criminal justice system to maintain their dominant position and to repress groups or social movements that threaten it (Liska, 1992). More specifically, Colvin and Pauly (1983) report that the more powerful groups have the most influence in shaping the legal order to their interests, while those groups lacking social power are most frequently subjected to criminal status (p. 521). This Marxist criminology approach concludes that through maintaining their privilege, those in power further exclude certain groups in society.

In our society, power is concentrated in the hands of the few. As Lanier and Henry (2004) note, this class-based economic order is maintained by a criminal justice system that serves the interests of the wealthy at the expense of the poor (p. 259). This notion can be best viewed within Jeffrey Reiman’s book, *The Rich Get Richer and the Poor Get Prison*. Reiman (1998) notes that competing interests within a society lead to a small number of individuals in positions of power. Therefore, the stage is set for conflict between a small group who control all the power and a larger group who challenge the system. Society is composed of many different groups, which have differing and competing interests, values, and norms (Lanier & Henry, 2004, p. 263). Ultimately, the conflict between groups or social classes in society is unavoidable; it is the conflict between these groups that lays the foundation for conflict theory.

Conflict criminologists draw their analysis, in large part, from the ideas of Max Weber. Lanier and Henry (2004) state that conflict theorists see inequality based on differences in wealth, status, ideas, religious beliefs, and so forth; these differences result in

the formation of interest groups that struggle with each other for power (p. 261). Given the fact that there are limited resources available in society, competition for these resources undoubtedly leads to conflict among individuals. More specifically, groups that have power over others (whether economic, social, ideological, moral, or religious) typically define what behaviors are criminal and which are not; thus, laws reflect the values and interests of the dominant group(s) (Lanier & Henry, 2004, p. 262). In essence, the laws created by those in power typically target powerless individuals, further adding power to the dominant groups. This concept can be further explained in relation to the war on drugs in the sense that the individuals in power are creating such severe punishments for low-level drug offenses. The powerless individuals being targeted by the war on drugs do not have the means to combat those in positions of power; therefore, the powerless individuals are the ones who suffer the most.

Disempowered groups in society feel resentment toward, and alienated from, a system that excludes them (Lanier & Henry, 2004, p. 260). The criminal justice system can be viewed as an apparatus that operates on behalf of those in power, with a mission to oppress a certain population of individuals in society. More pointedly, the war on drugs has served as a tool used by the dominant group in order to oppress numerous minority communities. In oppressing minority communities under the premise of fighting the war on drugs, those in positions of power have created and maintained a social divide in society. According to Weber, conflict is likely when only a few are allowed access to positions of privilege or when social mobility to these positions is highly restricted (Lanier & Henry, 2004, p. 265). In turn, this conflict creates or reinforces tension and resentment among those without power and privilege.

Pyrrhic Defeat Theory

Unlike Durkheim's theory, the Pyrrhic defeat theory explains the persistence of failing criminal justice policy, rather than its origins (Reiman, 1998, p. 159). Reiman (1998) states that a "Pyrrhic victory" is a military victory purchased at such a cost in troops and treasure that it amounts to a defeat. The Pyrrhic defeat theory argues that the failure of the criminal justice system yields such benefits to those in positions of power that it amounts to a success (Reiman, 1998, p.5). In order to keep their position, those in power imply that the real threat to Americans comes from law-breaking poor minorities. Reiman (1998) notes that this leads Americans to demand harsher doses of "law and order" aimed mainly at the lower classes.

The Pyrrhic defeat theory creates the view that the failure of criminal justice policy becomes intelligible when we see that it creates the "reality" of crime as the work of the poor and thus projects an image that serves the interests of the rich and powerful in American society (Reiman, 1998, p.7). In other words, we are accustomed to fear poor individuals because we are told that their crimes are the "worst" crimes; the media, and the powerful individuals who control the media, have a significant role in determining what we deem as the "worst crimes." Reiman (1998) concludes that specifically, those who are the biggest threat to society are males from urban communities who are young, black and poor. This image, created by lawmakers and the media alike, sends citizens into a state of fear and panic directed at anyone who falls into these categories.

By failing to define the dangerous acts of the powerful as crimes, and neglecting to enforce laws against this group, the criminal justice system fails to protect people from the most serious dangers (Reiman, 1998; Robinson & Murphy 2008). This simply means that

very serious crimes committed by individuals in power are often overlooked. How can this be? The answer lies within the notion that the individuals in power are the ones defining the term crime. As long as it appears that law enforcement is tough on crime by arresting poor, urban, black males, then society is at ease while the true criminals go unnoticed.

According to Reiman (1998) the Pyrrhic defeat theory is composed of five different hypotheses:

- Of the decision of the legislators: that the definitions of crime in the criminal law do not reflect the only or the most dangerous of antisocial behaviors.
- Of the decisions of the police and prosecutors: that the decisions on whom to arrest or charge do not reflect the only or the most dangerous behaviors legally defined as “criminal.”
- Of the decisions of juries and judges: the criminal convictions do not reflect the only or the most dangerous individuals among those arrested and charged.
- Of the decisions of sentencing judges: that sentencing decisions do not reflect the goal of protecting society from the only or the most dangerous of those convicted by meting out punishments proportionate to the harmfulness of the crime committed.
- Of all these decisions taken together: that what criminal justice policy decisions (in hypotheses 1 through 4) do reflect is the implicit identification of crime with the dangerous acts of the poor, an identification amplified by media representations of crime (p. 67-68).

These hypotheses, coupled with the fact that the criminal justice system is failing in avoidable ways to reduce crime, create the backbone of the Pyrrhic defeat theory as explained by Reiman. Institutions designed to fight crime instead contribute to its existence (Reiman, 1998, p. 7). This repressive function of the criminal justice system implies that some crimes can be overlooked if the price is right. Additionally, Moore and Elkavich

(2008) report that the politics of the war on drugs deem skyrocketing incarceration rates as a sign of success, not failure.

Pyrrhic defeat theory, as described by Reiman, can be best realized upon analyzing the war on drugs. The failure of the war on drugs has actually amounted to a success for individuals in power given that more serious crimes are often overlooked in an effort to combat minor drug usage at the street level. For instance, the war on drugs can be viewed as a success for those in power given that these individuals are able to get away with more criminal activity due to the fact that such importance is placed on policing the war on drugs. Essentially, the powerful can actually profit from crime.

Moral Panic Theory

Moral panics occur when a condition, episode, person or group of persons emerges to become defined as a threat to societal values and interests; its nature is presented in a stylized and stereotypical fashion by the mass media (Cohen, 1980, p. 9). In other words, the mass media, which is controlled by the powerful, facilitates creating fear among the public to the degree that moral panics arise out of trivial and often insignificant issues. Robinson and Scherlen (2007) reiterate this notion reporting that when an objective social problem is blown out of proportion, the result can be a “moral panic” (p. 10). By creating these moral panics, the mass media are capable of oppressing specific minority groups in an effort to maintain a political agenda. As a part of the political and economic elite, news agencies facilitate moral panics by relying on public officials as information sources and portraying those who would confront existing structures, policies and institutions as deviant, disgruntled or representative only of a fringe minority (Denham, 2008). Therefore, anyone viewed as going against these moral panics are deemed as deviants and face severe repercussions in the future.

By amplifying, or drawing broader attention to deviant behaviors, groups with power confirm accepted moral boundaries (Young, 1977). As previously noted, this concept reaffirms the notion that those in power define what is morally acceptable. Jenkins (1998) also reports that moral panics often emanate from a key event and involve a familiar issue. In utilizing certain events throughout history, politicians and lawmakers are able to use the media as a sounding board to instill enough fear into the public that change is brought about. Moral panic theorists argue that society is characterized by a variety of commonsense perceptions about crime and drugs that result in community intolerance for such behaviors and increased pressure for punitive action (Jenkins, 1994).

Dramatic exemplars, which facilitate both profit maximization among news agencies and legislative proposals among public officials and political elites, assist in generating moral panics when empirical evidence may offer little or no support (Denham, 2008, p. 957). In America, crime sells; therefore, news organizations that are assured a certain topic will increase viewers will promote an idea that may lack empirical evidence. In conceptualizing moral panics, Goode and Ben-Yehuda (1994) identify five criteria:

- A heightened level of *concern* about an issue should appear,
- That concern should contain a certain amount of *hostility* toward a certain group of individuals who are perceived as a threat to society,
- A *consensus* in society should consider the real threat,
- Even though reaction to the issue is largely *disproportionate*,
- Lastly, moral panics are generally *volatile*; tending to arise rapidly and typically fading in similar fashion.

In other words, moral panics typically arise out of a level of concern about a particular issue, which ultimately leads to feelings of hostility towards certain groups in society. These

exaggerated news stories leave Americans under the impression that an insignificant issue may be a serious threat to democracy.

Because moral panics “typically involve an exaggeration of a social phenomenon, the public response also is often exaggerated and can create its own long lasting repercussions for society in terms of drastic changes in laws and social policy” (Escholtz, 1997, p. 48). Once an issue becomes of significant importance to a community, it will undoubtedly pressure local authorities to do something about it. This pressure on local government often leads to long-lasting social policy that conceals many inequalities. More specifically, Robinson and Scherlen (2007) note that the danger of moral panics lies within the notion that they often lead to unnecessary changes in existing public policies or entirely new policies that are based on exaggerated threats (p. 11). Fueled by the mass media, moral panics can often lead to a heightened sense of fear over issues that may not be as dangerous as they appear.

Moral panics have led to the harsh enforcement of laws and policies especially in relation to the war on drugs. The media facilitated politicians’ efforts in creating a moral panic focusing on the issue of drug use most notably in the mid-1980s. The media were responsible for covering news stories focusing on the threat of drug abuse on American families. The individuals in positions of power were able to use the media as their sounding board to pass laws and policies that had previously been ignored. As will be discussed later at length, the media can be held accountable in large part for the state of affairs of the most recent drug war.

Labeling Theory

Labeling theory states that individuals are deviant mainly because they have been labeled as deviant by social control agencies and others (Hagan, 2011, p. 178). In other words, individuals are not deviant based on acts committed; rather, they are considered deviant based on the label attached to them after committing a crime. The most powerful groups have the ability to use their power and prestige to stigmatize groups and individuals with less power. The most significant groups are those in power who ban certain behavior through passing laws, and social control agents, such as police, who enforce these laws (Lanier & Henry, 2004, p. 193). It is within these powerful controlling agencies that certain behaviors are criminalized. The impact of these officially sanctioned meaningful encounters can transform fragile social identities into criminal careers through a process Frank Tannenbaum (1938) originally referred to as the “dramatization of evil” (p. 19-20). In exaggerating crimes and certain types of criminals, powerful agencies attach certain labels to specific groups in society. The damaging effect of labeling theory lies within the concept that criminals are stigmatized even when they are doing nothing wrong at the moment; one can readily see the implications for minority groups.

Labeling theorists are concerned with the failure of socialization (Lanier & Henry, 2004, p.181). Two important concepts in labeling theory are Edwin Lemert’s (1967) notions of primary deviance and secondary deviance (p. 17). Primary deviance refers to the initial deviant act itself, while secondary deviance consists of acts committed after being labeled. Secondary deviance is concerned with the psychological reorganization the individual experiences as a result of being caught and labeled as a deviant (Hagan, 2011, p. 178). In other words, the primary deviance happens in accordance with the deviant act; an individual

commits a crime and is labeled as a deviant. The secondary deviance occurs after an individual is labeled as a criminal, therefore, taking on the persona of someone with criminal or deviant tendencies.

In order to control behavior in society, there must be labels attributed to specific groups within society. For instance, the “good” members of a society may include enough individuals to make them the majority, whereas the “bad” members of a society are considered outliers or part of a minority. Labeling theory views moral labeling of behavior as problematic (Lanier & Henry, 2004, p. 191). In other words, as a society, there is an inclination to attribute certain labels to specific groups of individuals, racial minorities for example. These labels serve as a stigma, especially for prisoners upon re-entry into society. In labeling certain acts and individuals as deviant, a class distinction is created that sets certain individuals below others in society. Tannenbaum (1938) explains that the person we have labeled inevitably becomes the thing he is described as being, also known as the “self-fulfilling prophecy” (p. 20). In other words, as a result of negative labeling and stereotyping, people can become criminal; crime, then, is a self-fulfilling prophecy rooted in the fear that people might be criminal (Lanier & Henry, 2004, p. 203).

Labeling theorists argue that society, specifically through persons in powerful positions, creates more serious deviance by overreacting to minor rule breaking (Lanier & Henry, 2004, p. 181). In overreacting to such minor offenses, powerful agencies are able to sabotage an individual’s future based on the fact this person will face hardships later in life. For example, an individual who is convicted of a minor drug offense will have difficulties finding a job, adequate income, and proper education in the future. Agents of social control exert such a powerful impact that otherwise minor rule breaking or difference is magnified

through criminal justice processes to have a significant effect (Lanier and Henry, 2004, p. 193). By labeling this individual as a criminal, powerful agencies diminish any chance of success in the future; the majority of those labeled via the criminal justice system are racial minorities.

Factoring the effects of labeling theory on the individuals targeted by the war on drugs, severe repercussions can be realized. For example, we are bestowing symbolic brands of deviance upon millions of people; brands that are unquestioned statements of fact in the eyes of most American citizens (Murphy et al., 2010; Tannenbaum, 1938). In other words, after an individual has to endure the pains of incarceration, they must also live with a tainted reputation for the remainder of their natural lives. Extenuating circumstances are not taken into account with regards to labeling theory; all that matters in the eye of the public is the fact that this individual has a label that makes it easier to mark him as an “outsider” (Murphy et al., 2010). The war on drugs has done a great deal in exponentially expanding the number of individuals labeled within our society.

ORIGINS OF THE WAR ON DRUGS

America has a long and sordid history with “fighting” drugs and drug users (Robinson & Scherlen, 2007, p. 181). Although current drug war policy has become increasingly significant, it is essential to view the entirety of the drug war in order to better grasp its implications. Though local, state, and federal governments in the United States have fought drug wars since their existence, it was not until the late nineteenth and twentieth centuries that Congress passed laws banning particular drugs and their use (Robinson & Scherlen, 2007, p. 19). Research has suggested that the laws set in place were associated with oppressed minority groups. For example, opium in the 1900s was linked with Chinese immigrants, marijuana in the 1930s was linked with Mexican-Americans, and crack in the 1980s was linked with the African-American community (Robinson, 2005). If this finding is accurate, it suggests that the drug war of the 1990s replicates in United States history the pattern of drug wars as a means of social control over racial and ethnic minorities (Robinson, 2005, p. 317).

The Harrison Tax Act of 1914, which restricted the sale of heroin (and was quickly used to restrict the sale of cocaine), is a piece of legislation that is most relevant to the war on drugs given that it set precedent for future drugs to be banned (Head, 2011). Following the Harrison Tax Act, the Marihuana Tax Act of 1937 attempted to tax marijuana into oblivion due to its alleged popularity among Mexican-American immigrants – making it an easy target (Head, 2011). These acts became popular due to the fact that racist sentiment was intertwined with the drugs they were intended to combat. Further exacerbating these issues,

the propaganda film *Reefer Madness*, created by the government, used melodramatic events in order to instill fear into the general public (Gasnier, 1938). The film serves as a clear example of how individuals can be driven to moral panics when they are given information that contradicts the reality of drug use.

Although the United States has always engaged in wars against drugs, the current drug war began in the 1970s under President Nixon (Robinson, 2005, p. 315). In declaring drug use as “public enemy number one,” Nixon set the stage for later presidents to carry out this legacy (Frontline, 2000). Prior to the 1970s, drug abuse was seen by policymakers primarily as a social disease that could be addressed with treatment; this method of combatting drug use was known as the medical model in order to promote more humane treatment of offenders (Lehman, 1972). After the 1970s, drug abuse was seen by policymakers primarily as a law enforcement issue which should be addressed with aggressive criminal justice policies (Head, 2011). By 1973, calls for stricter penalties within the war on drugs prompted the creation of statutes known as the Rockefeller Drug Laws, creating mandatory minimum sentences of fifteen years to life for possession of four ounces of narcotics (Gray, 2009). These laws, enacted in New York, ultimately became the model for our national drug control policy. Also in 1973, Nixon created the Drug Enforcement Agency (DEA) within the Department of Justice as the federal government’s lead agency for suppressing drugs in the United States (Lyman & Potter, 1998). The addition of the DEA to the federal law enforcement apparatus in 1973 was a significant step in the direction of a criminal justice approach to drug enforcement (Head, 2011).

The most recent war on drugs, continued by President Reagan in 1982, intensified considerably after the emergence of crack cocaine (Reinarman & Levine, 1997). In fact, it

was during the Reagan administration that we began to see such strict intolerance for drug use in America. Since the onset of the war on drugs, the prison population in the United States has increased at an unprecedented rate. The war on drugs has done much to aid in adding to this problem. Much of the recent dramatic growth in our prison population is the result of the hardening of drug enforcement policy in the Reagan years (Reiman, 1998, p.43).

According to Reinerman and Levine (1997), the revitalization of the drug war can best be viewed with the emergence of crack cocaine in the 1980s. Although the newest drug war had only been launched just a few years prior to the emergence of crack cocaine, it was not until the 1980s that we began to see such a dramatic change in the drug war. In particular, in 1985, the crack epidemic exploded in New York. According to Frontline (2000), crack became a national issue in 1985 when *The New York Times* ran a cover story reporting that crack was cheap and powerfully addictive, devastating inner city neighborhoods. The following year, the death of promising college basketball star Len Bias from a cocaine overdose stunned the nation; ensuing media reports highlighted the health risk of cocaine and drugs in general become a hot political issue (Frontline, 2000). Without doubt, the media aided significantly in creating a moral panic over the issue of drug consumption, and cocaine use in particular.

These moral panics led to the Sentencing Reform Act of 1984 which created the United States Sentencing Commission that produced the federal sentencing guidelines (U.S. Sentencing Commission, 2004, see Appendix C). Following suit, the Reagan administration initiated the Anti-Drug Abuse Act of 1986, which appropriated millions of dollars in an effort to fight the drug crisis and build new prisons; but the bill's most consequential action was the creation of mandatory minimum penalties for drug offenses (Frontline, 2000). In

response to the growing crack problem, the mandatory minimum penalties carried with them fixed terms of imprisonment for varying amounts of certain drugs. More specifically, the laws created a 100-to-1 sentencing disparity for the possession or trafficking of crack when compared to penalties for trafficking of powder cocaine (Abrams, 2010; Robinson, 2005). In other words, this law stated that individuals caught with 5 grams of crack would receive the same five-year sentence in federal prison as individuals caught with 500 grams of powder cocaine. The mandatory minimum penalties brought about many racial disparities, especially in regards to the sentencing of offenders charged with crack versus cocaine. In fact, the U.S. Sentencing Commission proposed in 1995 to reduce the discrepancy; however, for the first time in history, Congress overrode their recommendation at the time (Frontline, 2000).

Following suit, the Anti-Drug Abuse Act of 1988 established the Office of National Drug Control Policy, which was intended to be temporary but is still in effect today (Byrnes, 2009). The ONDCP advises the President on drug-control issues, coordinates drug-control activities and related funding across the federal government, and produces the annual National Drug Control strategy which outlines efforts to reduce illicit drug use, manufacturing and trafficking, drug-related crime violence, and drug-related health consequences (ONDCP, 2011a). The Anti-Drug Abuse Acts of 1986 and 1988 have helped shape the current drug laws in effect today.

Drug laws at times are not really about drugs, but instead about who is using them (Robinson & Scherlen, 2007, p. 20). As previously noted, the foundation of conflict theory states that the individuals in power oppress certain groups in society. This concept can be better understood when we look at the war on drugs and who specifically becomes targets within this war. Without question, many of America's drug wars have been inspired by

racist sentiment or ethnocentrism (Robinson & Scherlen, 2007, p. 25). Given the extensive history of racial discrimination within these wars on drugs, it is of paramount importance to examine the current state of affairs of the war on drugs with specific importance placed on racial disparities. Table 1 exemplifies the racial discrimination that can be viewed within the war on drugs from the most current year, 2010.

Table 1. Statistics of African-Americans Processed within the Criminal Justice System

Percent of drug users that are African-American	10.7%
Percent of drug arrestees that are African-American	31.8%
Percent of drug convictions that are African-American	27.6%
Percent of drug incarcerations that are African-American	44%

*These federal 2010 statistics come from the National Survey on Drug Use and Abuse, The Sourcebook of Criminal Justice Statistics, and the Bureau of Justice Statistics combined

MEDIA

People arrive at judgments without devoting a lot of attention or effort to learning, remembering, and sifting through details (Lodge & Taber 2005; Marcus, Neuman, & MacKuen, 2000). Therefore, if an individual is frequently exposed to news stories covering drug use, accompanied by visuals of African-Americans, this individual is more likely to equate the two in the future. Simply mentioning a news story invokes the viewer to recall information they can relate to that same story. Nelson, Clawson, and Oxley (1997) also argue that the media influence certain opinions by stressing particular facts, endowing them with greater apparent relevance to the issue than they actually have. As relates to who engages in drug use, individuals will only recall that which the media have repeatedly portrayed.

What are the factors related to the drug war that have led to the high levels of prison populations to date? Research suggests that the media play a large role in determining what society deems as important. For example, Robinson (2005) notes that the media create moral panics focused on drug use. By determining what the public will see, the media have an enormous amount of power. It is easy to see why the average American believes that the typical offender is African-American; the crimes that receive the most attention are “street crimes” (Walker, Spohn, & DeLone, 2004, p. 37). Given the fact that a majority of street crimes take place in low-income areas, the faces being shown in the news are overwhelmingly darker faces. Visual analysis of news stories about illegal drugs illustrates that there is more going on in the television news than meets the ear (Dorfman & Jernigan,

1996). When the media make a conscious decision to run news stories involving drug use with the visual aid of minority groups, the public undoubtedly learns to connect the two. Similarly, citizens are more likely to recognize drugs as the “most important problem” in response to the notable attention in the national news (Robinson & Scherlen, 2007, p. 14). More importantly, the drug dealers, users, and arrestees depicted in the media are overwhelmingly African American (Dorfman & Jernigan, 1996).

The public has become conditioned to equate darker faces with more crime. One study found that when asked to imagine a typical drug user, over 95 percent of survey respondents pictured an African-American (Burston, Jones, & Robertson-Saunders, 1995). Almost 100 percent of individuals in this study equated drug use with being an African-American. Small (2001) reaffirms this notion in saying that media coverage aids in feeding the misconception that African-Americans use drugs at exponentially higher rates than whites. In actuality, drug use is far more common among white individuals only because there are more whites in the total population. Fellner (2009) reports that because the white population is more than six times greater than the black population, the absolute number of white drug offenders is far greater than that of black drug offenders (Figure 1). As of 2010, the rates of illicit drug use among differing racial groups are as follows: Blacks account for 10.7 percent of illicit drug users, whites constitute 9.1 percent, Hispanics represent 8.1 percent, and Asians comprise merely 3.5 percent (NSDUH, 2010). These statistics exemplify the fact that African-Americans engage in illicit drug use at about the same rates as white individuals.

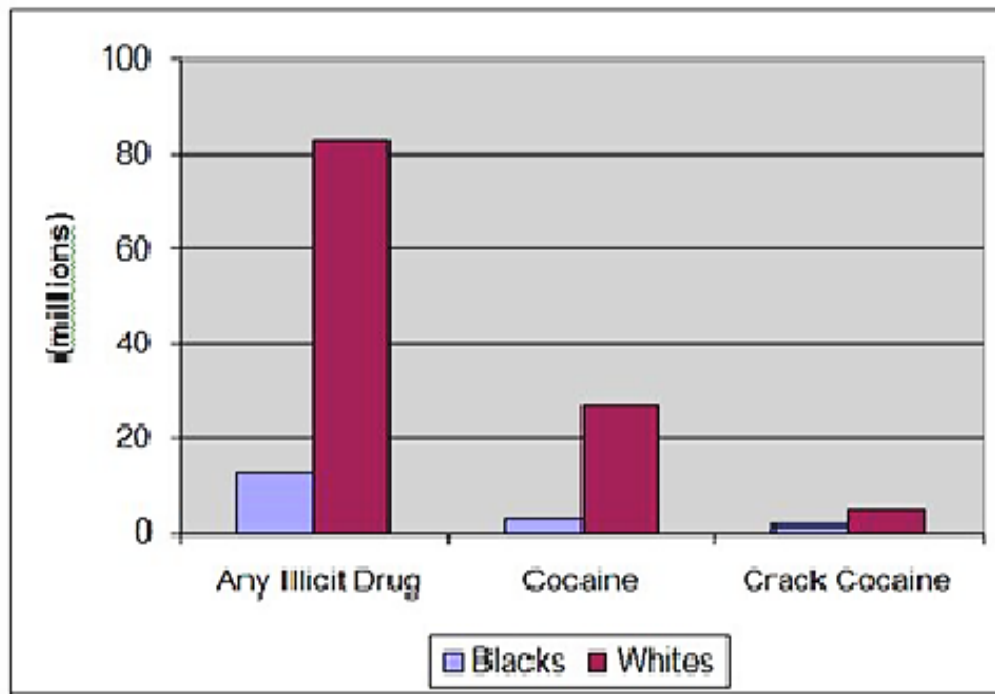


Figure 1: Lifetime Drug Use by Race, Ages 12 and Older
Source: Human Rights Watch, 2009

People get their mental constructs about who is a criminal at least in part from the occasional television or newspaper picture of who is inside our prisons (Reiman, 1998, p. 142). This distorted image leads people to believe that certain kinds of individuals are dangerous and should be incarcerated. Robinson and Scherlen (2007) add insight to this concept stating that public concern increases only after media coverage of drugs increases. Television news has become the chief source of information and analysis of major social problems for the overwhelming majority of Americans (Roper Organization, 1991). Cohen pointed out in the early 1960s, and later research has confirmed, that the news may not tell people what to think, but it definitely tells them what to think about (Cohen, 1963). In

covering specific news stories over others, the media places significant importance on certain topics, while completely disregarding others.

The media, in what they portray and in what they choose not to portray, reinforce moral boundaries in society (Robinson, 2005, p. 334). In viewing the media in terms of the war on drugs, it is pertinent to explore the role the media have played in shaping public opinion. On television, in news magazines and in newspapers, the media have at times accepted and amplified the government's claim that illegal drug use was approaching epidemic proportions (Gitlin, 1989; Orcutt & Turner, 1993). Over the years from 1986 to 1992, U.S. citizens were treated to a barrage of news stories about illegal drugs (Dorfman & Jernigan, 1996). In the 1990s, the public was not concerned about drugs until after the media coverage captured their attention (Robinson, 2005).

Drug control policies generally do not arise out of the objective nature of drug use per se, but instead tend to develop out of moral panics created and promoted by actors in the political realm (Robinson & Scherlen, 2007). In other words, the drug policies in place today have come about based on the political agendas of those in power. According to Gans (1979), the news “supports the social order of public, business and professional, upper-middle class, middle-aged, and white male sectors of society” (p. 60). More specifically, Robinson and Scherlen (2007) note that politicians create concern about drug use in order to gain personally from such claims in the form of election and reelection; they achieve this largely by using the media as their own mouthpiece (p. 11). By exaggerating a scenario, politicians are viewed as hope for the future. These individuals make promises to protect our communities from “danger” when, in actuality, this “danger” is largely insignificant. It is also pertinent to realize that this “danger” is typically equated with minorities.

As has been previously noted, those who are in positions of power deem certain laws more important than others. What is important to realize is the fact that these laws require public support. One significant way to increase public support of an issue is to make it seem more prevalent and dangerous than it actually is. Television favors middle- or upper-class persons when they appear in the news, because those persons have the skills and resources to manipulate television's production practices (Dorfman & Jernigan, 1996). In having the advantage to decide what the public will be exposed to, those in power ultimately determine future policies and laws.

The mass media have been telling Americans what to think for many decades. As relates to the current drug war, the media began covering stories on certain illicit drugs in the mid-1980s. As previously noted, the crack scare began in late 1985, when *The New York Times* ran a cover story announcing the arrival of crack to the city (Frontline, 2000; Robinson, 2005, p. 335). Following suit, other magazines such as *Time* and *Newsweek* also ran cover stories, further calling attention to an issue Reinerman and Levine (1989) defined as highly inaccurate. Crack cocaine use was actually quite rare during this period, exemplifying the fact that news coverage at the time did not reflect reality (Orcutt & Turner, 1993).

Once the media and public were all stirred up, laws were passed aimed at toughening sentences for crack cocaine. As has previously been noted, the Anti-Drug Abuse Act of 1986 was established due in large part to the extensive media attention that focused on crack. Reinerman and Levine (1997) note that in the 1980s, media portrayals of crack cocaine were highly inaccurate, creating a fear among the general public that was simply unwarranted. The crack crisis also served to construct an atmosphere conducive to getting tough on crime

and maintain status quo approaches to fighting drugs (Robinson & Scherlen, 2007). What is important to realize as relates to the harsh punishment for crack cocaine is the fact that it was a cheap drug, making it accessible to minority communities; therefore, the target of the toughening sentences were poor, black communities.

Others have argued that there never really was a drug crisis, at least in terms of an epidemic of illegal drug use (Mosher & Yanagisako, 1991; Orcutt & Turner, 1993; Reinerman & Levine, 1997). In other words, although individuals engaged in illicit drug use, it was not as significant of an epidemic that the media liked to portray. Orcutt and Turner (1993) demonstrate how the news media distort statistics in order to support the view that the drug problem was growing. In actuality, although drug use in the United States was declining in the late 1980s and early 1990s, “drug war” rhetoric and punitive solutions to the “problem” ran rampant (Dorfman & Jernigan, 1996). The punitive solutions following the war on drugs have ultimately led to the present state of affairs, including an overrepresentation of minorities in the criminal justice system. In 2010, about 3.1 percent of black males in the nation were in state or federal prison, compared to just under .05 percent white males and 1.3 percent of Hispanic males (BJS, 2011). More pointedly, 51 percent of federal inmates were serving time for drug related offenses while 18 percent of state prison inmates were serving time for the same offenses. The media has been partly responsible for fueling public support for a largely ineffectual response to illegal drug use in America (Dorfman & Jernigan, 1996).

Although Schuman et al. (1997) contend that racist attitudes have declined dramatically over the past several decades, one must question the extent of the decline. By using clandestine measures, the news media are able to enhance racial and ethnic stereotypes

by drawing upon symbolic words and images when covering a news story. Since race is not always overtly discussed in the news media, it is important to question the underlying meaning associated with specific news coverage. At a deeper level, racial disparities in the criminal justice system reflect the way race shaped the definition of the drug problem and hence the proposed solutions. When crack took hold in black communities, public officials could have responded with aggressive community-building investments in substance abuse treatment, education, employment, and the like; instead, they chose punitive policies of arrest and incarceration, – which appealed to whites anxious about their declining status and fearful about the “dangerous” black urban underclass (Human Rights Watch, 2010).

In order to play on racial issues that have existed for many years, the news media have figured out a way to activate stereotypes without blatantly so stating. By calling attention to certain issues and ignoring others, the news media alter the foundation of public opinion (Iyengar & Kinder, 1987; Krosnick & Kinder, 1990). The “scar of race” remains pervasive today and it is highly unlikely that we should see a noticeable change in race and politics (Sniderman & Piazza, 1993). What is pertinent to understand, as relates to the relationship between the media and public opinion, lies within the fact that there is a vicious cycle at play within the criminal justice system. Starting with the media, those in power tell individuals what issues are important. In turn, individuals pressure lawmakers and police to be tougher on crime. Inevitably, this “tough on crime” stance leads to an increase in individuals being arrested, sentenced, and ultimately imprisoned for very minor offenses and is especially amplified within minority communities.

POLICE

In order for the police to do their job, they must first adhere to the law that is set in place. Therefore, if the law is biased, we can assume that subsequent policing will also be biased given the fact that the duty of a police officer is to carry out the law. Robinson (2005) states that the subsequent biases in law enforcement can be referred to as “innocent bias” (p. xiv). More specifically, innocent bias can arise from the use of police discretion, police profiling, the location of police on the streets, the particular focus of police on certain types of crime, and from the policing of the war on drugs (Robinson, 2005, p. 156). This notion exemplifies the fact that law enforcement does not require bad police per se; rather, it merely requires bad law.

Since the mid-1980s, the United States has undertaken aggressive law enforcement strategies and criminal justice policies aimed at curtailing drug abuse (Human Rights Watch, 2000). Someone is arrested for violating a drug law every 19 seconds (Uniform Crime Report, 2010). Research has shown that African-Americans and Hispanics, in particular, are stopped more often, searched more often, and issued more tickets than whites (Bureau of Justice Statistics, 2001). Taking this into account, we can see that the law, and subsequent policing, is biased against minorities. Robinson (2005) reiterates this notion stating that criminal law is specifically biased against poor people and people of color. Although the line between biased law and biased policing remains blurred, the outcome remains the same; an increased awareness of certain racial groups over others.

One particular way for police to obtain suspects is through racial profiling. In recent times profiling had become a frowned upon, ignored, denied, and vilified practice; however, since the terrorist attacks and subsequent U.S. Patriot Act in 2001, profiling has enjoyed increased support (Lanier & Henry, 2004, p. 259). Utilizing their power of discretion and their power to profile, police officers are able to exacerbate the problem of racial inequalities within policing the war on drugs. Racial profiling is part of the apparatus of mystification of the real power (Meehan & Ponder, 2002, p. 400). Therefore, profiling at the street level unavoidably leads to discrimination throughout the entire criminal justice system.

Robinson (2005) notes that police are disproportionately located in some areas of our country while being nearly absent from others. Drug use in suburban areas goes unchecked and underreported, while people of color are profiled in urban areas as potential drug users and dealers (Moore & Elkavich, 2008). The location of police is essential to take into account upon examining arrest statistics within the war on drugs. More specifically, police are disproportionately located in neighborhoods where poor African-Americans live, thus making it more likely that they will be arrested (Robinson, 2005, p. 161).

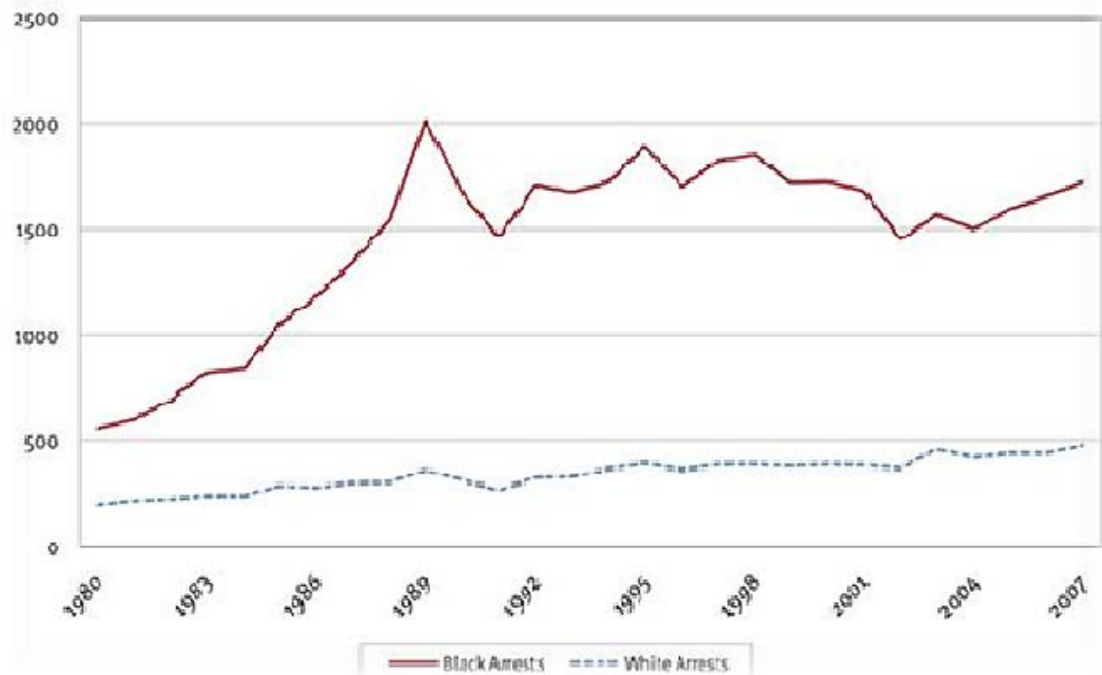
Given the fact that such disparities exist in the rates of arrest, it is significant that we look toward situational factors that could possibly be used to explain the differentiation in arrest rates. For example, Beckett et al. (2005) suggest that one reason we see such disparities within the war on drugs lies within the fact that most minority groups live in low-income areas where a majority of the drug deals occur in public settings. Considering that minorities have limited private spaces, they are forced to engage in illegal drug activity in open spaces, where they are more visible to the police. Goode (2002) also notes that when compared to their white counterparts, minority drug users often conduct business outdoors.

Given this reality, in the eyes of the police officer, it is much easier to carry out their duties in locations where arrest is typically guaranteed.

Goode (2002) also notes that targeting street dealers is a major reason for racial disparities in drug arrests and incarceration. According to Robinson (2005), in the inner-cities, individuals are subject to intense police scrutiny due to the fact that a high proportion of officers are patrolling this area. Given that a great deal of minority members live in these low-income areas, there would appear to be a linkage between poor people being arrested, and minorities being arrested. The high volume of police in these areas, coupled with the disproportionate number of poor minorities, ultimately leads to the high volume of minorities being arrested. Police departments are under extreme pressure to show progress. In addition to this concept, Tonry (1995) notes that the quickest way to show results is to enhance policing and arrests in disadvantaged neighborhoods, which are already disproportionately poor and black. This is a sure bet for police officers who are required to show results.

Additionally, the racial disparities among arrest rates can be viewed in sting operations. For example, in a study conducted by Beckett et al. (2005), it was shown that in over two-thirds of all bust-buy operations by the Seattle police, officers specifically requested crack cocaine. According to Reinerman and Levine (1997), the media's representation of crack cocaine suggests that the images have become highly racialized. The sole focus on crack can be viewed as a means of inadvertently targeting certain minority groups. However, law enforcement's focus on minorities and on the drug most associated with "blackness" suggests that law enforcement policies are predicated on the assumption that the drug problem is a minority problem, and that crack is "the worst" (Beckett et al., 2005, p. 436).

Although research has shown that police are more likely to patrol certain areas over others, the extent of the problem can best be understood by analyzing actual numbers of arrests as a result of the war on drugs. The Bureau of Justice Statistics (2011) reports that between 1980 and 2009, the adult arrest rate for drug possession or use increased 138 percent. Not only was there a sharp increase in the arrest rates in general, but the most detrimental effects of the war on drugs were extracted from minority populations. For example, in the two decades following 1980, the national drug arrest rate among whites increased from approximately 350 to 463 per 100,000 population, while the national drug arrest rate among blacks increased from roughly 650 to 2,907 per 100,000 population (Donziger, 1996). Figure 2 highlights these differences.



**Figure 2: United States Rates of Adult Drug Arrest Rates by Race, 1980-2007 (rates calculated per 100,000 residents of each race)
Source: Human Rights Watch, 2009**

More specifically, African-Americans were arrested on drug charges at rates that were 2.8 to 5.5 times as high as those of whites in every year from 1980 through 2007 and about one in three of the more than 25.4 million adult drug arrestees during the same period were African American (Human Rights Watch, 2009; see Appendix A). Robinson (2005) also notes that in 2000, African Americans made up fewer than 13 percent (U.S. Census Bureau, 2010) of the U.S. population but 34.5 percent of the arrests for drug abuse violations. Over a decade later, the data are consistent. For example, in the state of North Carolina, African-Americans made up 21.6 percent of the total population but 52 percent of the arrests for drug abuse violations (Drug Policy Alliance, 2011).

In light of these disparities, it is essential to question the level of activity in drug usage among differing minority groups. In other words, we must question whether or not the arrest rates demonstrated are causally related to the disparity of race and incarceration. Research has shown that blacks and Hispanics are no more likely than whites to commit drug crimes (Banks, 2003; Moore & Elkavich, 2008; Reiman, 1998). In other words, racial differences in rates of arrest and conviction do not necessarily imply racial differences in rates of offending (Banks, 2003). Thus, the data indicate that the likelihood of use among differing racial groups is universal, while the likelihood of arrest among differing racial groups is highly skewed.

Reiterating this notion, Reiman (1998) states that arrests of blacks for illicit drug possession or dealing have skyrocketed in recent years, rising way out of proportion to drug arrests for whites – though research shows no greater drug use among blacks than among whites (p. 112). It is the poor and the people of color, who are financially or socially unable to remove themselves from environments that are labeled “drug areas,” who are persecuted (Moore & Elkavich, 2008, p. 783).

Racial disparities in drug arrests reflect a history of complex political, criminal justice and socio-economic dynamics, each individually and cumulatively affected by racial concerns and tensions (Human Rights Watch, 2009). Although most American drug offenders are white, African American communities have been and continue to be the principal "fronts" of the drug war; to some extent, this is because drug arrests are easier there and police methods are rarely protested (Human Rights Watch, 2010).

Given the fact that the highest number of arrests (1,638,846) in 2010 were for drug abuse violations (UCR, 2010), it is essential that we question the severity of drug use today.

One would expect that the majority of drug arrests would be for high level offenses; however, that is simply not the case. According to the Uniform Crime Report (2010), drug arrests are primarily for simple possession; not necessarily for serious offenses of sales and manufacturing. As Table 2 demonstrates, policing the war on drugs has been largely ineffective due to the fact that the wrong individuals and the wrong substances are being targeted.

Table 2. Percentage of individuals arrested for the sale and manufacturing of illicit drugs versus the percentage of individuals arrested for possession of illicit drugs in 2010

Drug abuse violations		U.S. total	Northeast	Midwest	South	West
Total¹		100.0	100.0	100.0	100.0	100.0
Sale/Manufacturing:	Total	18.1	22.3	19.6	17.8	15.4ch
	Heroin or cocaine and their derivatives	6.2	12.0	4.1	6.0	4.3
	Marijuana	6.3	6.8	9.6	5.4	5.5
	Synthetic or manufactured drugs	1.8	1.6	1.5	3.1	0.6
	Other dangerous nonnarcotic drugs	3.7	2.0	4.3	3.3	5.0
Possession:	Total	81.9	77.7	80.4	82.2	84.6
	Heroin or cocaine and their derivatives	16.4	16.6	10.0	14.9	21.3
	Marijuana	45.8	48.3	53.9	51.5	33.5
	Synthetic or manufactured drugs	4.1	2.9	4.3	5.5	2.8
	Other dangerous nonnarcotic drugs	15.7	9.8	12.3	10.3	27.1

¹ Because of rounding, the percentages may not add to 100.0.

Source: Uniform Crime Report 2010

In other words, the majority of those being arrested for drug abuse violations are being arrested for simple possession and especially marijuana possession. As the Uniform Crime Report (2010) notes, marijuana is one the least dangerous or harmful drugs; therefore, it is evident that the policing of the war on drugs targets the wrong individuals.

COURTS

Between arrest and imprisonment lies the crucial process that determines guilt or innocence (Reiman, 1998, p. 124). Given the disparities in drug arrests, it is essential to consider the repercussions of arrest. According to Reiman (1998), the movement from arrest to sentencing is a funneling process, so that discrimination that occurs at any early stage shapes the population that reaches later stages. Furthermore, Small (2001) states that unequal treatment of minority group members pervade every stage of the criminal justice system. In other words, we can expect to see greater disparities in the sentencing phase due to the fact that the arrest phase already has so many disparities within it. Accordingly, studies have shown that African-Americans are more likely to be arrested, indicted, convicted, and sentenced to an institution than are whites who commit the same offenses (Reiman, 1998).

In light of the severity and seriousness of the sentencing phase, it is essential to examine the concept of mandatory sentencing. Mandatory minimum sentences simply establish a minimum sanction that must be served upon conviction for a criminal offense (Robinson, 2005, p. 209). Regardless of prior record and the seriousness of the offense, the offender will serve a mandatory sentence imposed by the sentencing guidelines. According to Frontline (Sterling, 1999), the typical amount of time imposed under the mandatory sentences was five- or ten-year sentences. Mandatory minimum sentences undoubtedly give legislators tremendous power in determining the direction of U.S. sentencing practices

(Robinson, 2005, p. 223). Invariably, the mandatory sentences also remove a great deal of power from the judge's hands.

The war on drugs is responsible for a large share of mandatory sentences (Robinson, 2005, p. 209). In an effort to get "tough on crime" Reagan signed the Anti-Drug Abuse Act of 1986 creating mandatory minimum penalties for drug offenses (Sterling, 1999). These mandatory sentences ultimately took the discretion away from presiding judges in that judges could not impose a sentence less than the fixed period decided by the United States Sentencing Commission. More specifically, Gray (2009) notes that fixed sentences of drug offenders are based on variables such as the amount seized and whether a firearm was present. The mandatory sentences began as a means to deter crime and drug use, but have ultimately led to the massive influx of individuals in prisons and jails for first time, non-violent drug offenses.

According to the Department of Justice (2006), the U.S. Supreme Court case of *United States v. Booker* in 2005 converted the mandatory sentencing regime that had been in place for years to an advisory one. This means that instead of having no discretion in the sentencing phase, judges now have the option to adhere to the mandatory sentences or to divert and impose their own punishment. This newfound discretion could also be a factor in exacerbating the racial inequalities within the sentencing phase because judges may be able to take into account the race of an offender when making their judgment. However, although judges have this option, there is still an inclination by the majority of the judiciary to adhere to the guidelines rather than departing from them.

The racial discrimination that has been realized in the sentencing phase of the criminal justice system remains an issue of utmost importance. Robinson (2005) notes that

blacks are no more likely than whites to be sentenced to a term of imprisonment for violent crimes or property offenses; however, they are more likely to be sentenced to incarceration for drug offenses (p. 230). Similarly, Small (2001) notes that the vigorous prosecution of the drug laws has caused the state to imprison more people for non-violent drug crimes each year than for violent crime.

Upon reviewing drug sentencing statistics and race, the findings are even more shocking. According to the Bureau of Justice Statistics (2003), blacks are sentenced to prison more than half the time for drug offenses, whereas whites are sentenced to incarceration only about one-third of the time for the same offenses. This means that, for the same offense, whites will be sentenced to a term of incarceration at a lower rate than blacks even though the white population engages in drug use at higher rates than blacks. Petersilia (1985) expands on this, stating that blacks and Hispanics are also less likely to be given probation, more likely to receive prison sentences, more likely to receive longer sentences, and more likely to serve a greater portion of their original time.

It is of utter importance to realize that there is a correlation between arrests and sentencing. Taking into account the types of sanctions imposed on drug offenders, this notion can be better realized in accordance with policing issues. As has previously been noted, the police presence in minority communities ultimately leads to an increased amount of arrests. For example, middle- and upper-class neighborhoods may have residents who engage in illegal activity; however, the lack of police presence in these neighborhoods guarantees the fact that those who are breaking the law will go unpunished. Given the greater police presence in poor, urban, minority communities, it comes as no surprise that

these individuals will often have longer criminal records. Upon re-entry into the system, their prior records are taken into consideration when judges are imposing sanctions.

Not only are there stark contrasts in the types of sanctions imposed, but the length of the sentences increase for minority groups as well. A study of offender processing in New York State counties found that, for offenders with the same arrest charge and the same prior criminal records, minorities were sentenced to incarceration more often than comparably suited whites (Nelson, 1992). At the federal level these results are similar. For example, Mauer (2009) reports that African-Americans are 21 percent more likely to receive mandatory minimum sentences than white defendants and 20 percent more likely to be sentenced to prison than white drug defendants. It is simply unfathomable to grasp this concept given the fact that African-Americans constitute a relatively small percentage of the overall population. Adding to this construct is the fact that in the federal system, black offenders receive sentences that are 10 percent longer than white offenders for the same crimes (Mauer, 2009). The following graphic displays these general findings, as well as a comparison between states.

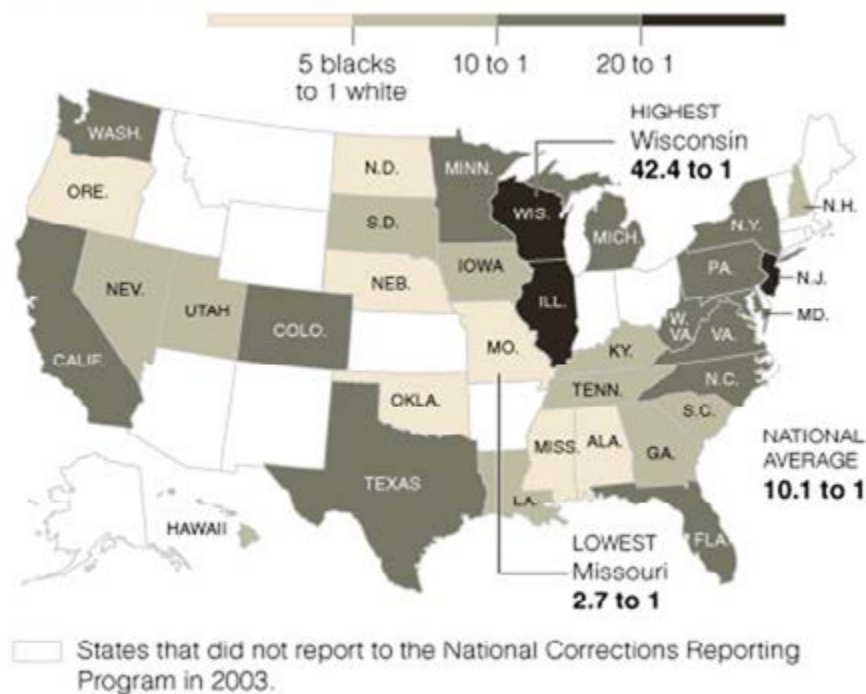


Figure 3: Racial Disparity in Drug Sentencing

A study reveals that drug law enforcement in the United States produces disproportionate rates of black incarceration. The ratios between the rates at which blacks and whites are sent to prison for drug offenses are calculated per 100,000 residents of each race. Figures are for 2003.

Source: Human Rights Watch, 2009

In the United States, the “war on drugs” falls disproportionately on poor individuals and African Americans in particular. Although white Americans commit more drug offenses, African Americans are sent to prison at 10 times the rate of whites (Human Rights Watch, 2009). All in all, race has a significant and substantial effect during the sentencing phase. Given the fact that this is the most crucial stage within the criminal justice system – the phase that ultimately determines one’s future – the competency of an offender’s attorney also comes into play. It is significant to realize that since minorities are disproportionately poor they cannot afford attorneys who are capable or motivated to fight on behalf of their client.

On the contrary, the court-appointed attorneys are motivated solely to bring their case to a close quickly by negotiating a plea of guilty (Reiman, 1998, p. 126). The caseloads of court appointed attorneys and public defenders prove to be too much of a task, ultimately minimizing their aid to minority defendants who stand trial for drug offenses.

Lastly, and perhaps most influential of all examples of racial disparities within the courts aspect of the drug war, lies within the discrepancy of punishment with regards to crack cocaine versus powder cocaine. The Anti-Drug Abuse Act of 1986 led to laws yielding sentences for first-time offenders, with no aggravating factors, that are longer than the sentence for kidnapping, and only slightly shorter than the sentence for attempted murder (Reiman, 1998, p. 130). More than 80 percent of the offenders who had received the far harsher federal crack sentences were black according to Human Rights Watch (2010). More specifically, only 39 percent of crack users were black (Robinson, 2005, p. 232). After being criticized as discriminatory against minorities, President Obama signed the Fair Sentencing Act in 2010, which cut the disparities in crack versus cocaine to 17.8 to 1 (Abrams, 2010). It is important to realize that the Fair Sentencing Act remains to impose racially disparate sentences.

Although the Fair Sentencing Act is a step in the right direction, Human Rights Watch (2010) notes that most drug offenders are prosecuted in state courts under state law – out of 1.7 million annual drug arrests nationwide, only about 25,000 are prosecuted in federal courts – and the new federal cocaine sentences will mean nothing to them. While symbolically important, the act does little to address the overwhelming racial disparities in drug law enforcement: blacks constitute 33.6 percent of drug arrests, 44 percent of persons convicted of drug felonies in state court, and 37 percent of people sent to state prison on drug

charges, even though they constitute only 12.6 percent of the U.S. population and blacks and whites engage in drug offenses at equivalent rates (Human Rights Watch, 2011).

CORRECTIONS

The United States leads the world in the number of people incarcerated in federal and state correctional facilities; the United States incarcerates more people for drug offenses than any other country (Justice Policy Institute, 2008; The Pew Center on the States, 2008). As Robinson (2005) notes, much of the increase in prisons has been due to drug convictions including a 478 percent increase in drug offenders sentenced to state prisons and a 545 percent increase in drug offenders sentenced to federal prisons from 1985 to 1996 (p. 241). Reiman (1998) states that the movement from arrest to sentencing is a funneling process, so that discrimination that occurs at any early stage shapes the population that reaches later stages (p. 114).

Because corrections represent the end of the criminal justice process, it is the best place to look for racial disparities (Robinson, 2005, p. 263). This notion, coupled with Reiman's funneling theory, exemplifies the fact that racial inequalities within the war on drugs will be most noticeable in the corrections phase of the criminal justice system. According to Human Rights Watch (2010), black men enter state prisons on drug charges at more than ten times the rate of white men. The threat of having to interact with criminals and drug offenders has led the public, as well as public officials, to have a "tough on crime" stance in the past. With increasing incarceration rates, it is essential to question what the war on drugs is actually intended to accomplish.

Similarly to Robinson's assertion, many other scholars have also noted that the war on drugs is an influential cause of rising incarceration rates and of racial disparities in prison

and jail populations (Beckett et al., 2005; Bobo & Thompson, 2006; Tonry, 1995). Over the past four decades we have seen incarceration rates increase exponentially. Since 1980 there has been a steady rise in the numbers of people in jail, on parole, in prison, or on probation (Bobo & Thompson, 2006). More specifically, King and Mauer (2007) note that about a half a million people are incarcerated for drug offenses today, compared to an estimated 41,000 in 1980.

Bobo and Thompson (2006) note that in 2004, although black males constituted 43.3 percent of those incarcerated in state, federal, and local prisons or jails, they only account for 12.6 percent of the total population. Although African-Americans do not constitute a majority of the inmates in our prisons and jails, they do make up a percentage that far outstrips their proportion of the population (Reiman, 1998, p. 110). For example, in 1991, when blacks made up 12 percent of the national population, they accounted for 46 percent of the U.S. state prison population (BJS, 1991). The same holds true today, with blacks comprising only 12.6 percent of the population (U.S. Census Bureau, 2010), but 31.8 percent of those charged with a drug abuse violation and 44 percent of all prisoners serving time for drug offenses (Sourcebook of Criminal Justice Statistics, 2010).

The stark differences in population statistics exemplify how the war on drugs is not evenly realized among differing racial groups. It is also important to note that Hispanics are experiencing the effects of the war on drugs to the same degree that African-Americans have in the past. The Sentencing Project (2003) reports that Hispanics are the fastest growing group of individuals being imprisoned. Additionally, Hispanics are twice as likely as whites and equally as likely as blacks to be admitted to state prison for drug offenses (Sentencing Project, 2003), further exemplifying the racial disparities within the drug war.

Given Reiman's funneling theory, it is of paramount importance that we focus on the final phase in the system: corrections. Goode (2002) notes that African-American federal drug offenders released in 1998 served a mean sentence of 49.2 months while whites served a mean of 38 months. These differences are further underscored and exacerbated in U.S. District Courts, during the same year, where African-American drug offenders served a mean sentence of 109.4 months while white drug offenders served a mere 64.1 months. What is even more significant, as relates to time served, is the fact that violence is seldom an issue in these cases. For example, research shows that drug law offenders are overwhelmingly nonviolent (Human Rights Watch, 1999). Furthermore, this research shows that, in New York specifically, almost 80 percent of drug offenders sent to prison had no prior convictions for violent crime. Most remarkable is the fact that vigorous prosecution of the drug laws has caused the state to imprison more people for non-violent drug crimes each year than for violent crime (Small, 2001).

For African-American males in their twenties, 1 in every 8 is in prison or jail on any given day, and three-fourths of all individuals in prison for drug-related offenses are people of color (Human Rights Watch, 2009; The Pew Center on the States, 2008). More specifically, the Sentencing Project (2003) reports that most of the individuals in prison for drug offenses are not high-level actors in the drug trade and most have no prior criminal record for a violent offense. According to Moore (2009), in recent years there has actually been a significant decline in blacks in state prisons for drugs; in fact, from the years 1999-2005 there was actually a drop of 21.6 percent (Figure 4). However, since there has been a decline in blacks for drug violations, the proportion of African Americans incarcerated has not seen a dramatic change. In other words, given that blacks make up merely 12.6 percent

of the total population, racial disparities within prisons and jails are still highly skewed against African Americans.

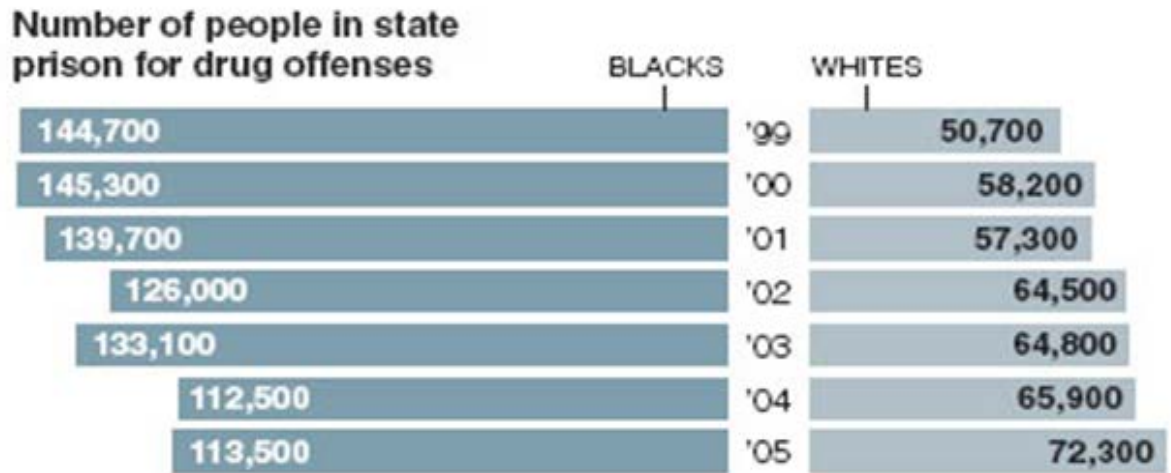


Figure 4: Changes in Prison Population

From 1999 to 2005, the number of blacks in state prison for drug offenses declined by 22 percent, while the number of whites increased by 43 percent. The number of overall prisoners remained nearly constant during the same period.

Source: King, R., and Mauer, M., 2007

PROBLEMS AS A RESULT OF THE WAR ON DRUGS

Racial disparities can be felt throughout the criminal justice system, but also in the lives of the ex-convicts after prison. Given the types of punishments imposed on drug offenders at the sentencing phase, it is essential to determine how these sentences affect their lives after prison. Bobo and Thompson (2006) states that the new intensified and racialized mass incarceration has had a number of reverberating social effects that reach beyond the mere fact of imprisonment. As previously noted, labeling theory has many detrimental effects on an ex-convict. As Murphy et al. (2010) note, the electronic scarlet letter demonstrates the reality of life post incarceration due to the fact that these individuals are judged based on their criminal record without taking into consideration other skills and talents they may possess. This is of significant importance as relates to the war on drugs given the fact that a plethora of these individuals are convicted for low-level, non-violent drug offenses.

Upon release from prison or jail, individuals are expected to find jobs and become productive members of society. However, with the incarceration experience also comes the stigma of a having a criminal record. Pager (2003) found that although low-skilled African-Americans can expect to face discrimination in seeking a job, African-Americans with a criminal record have vanishingly smaller prospects of an effective job search. What is even more distressing about Pager's finding is that even white individuals with a criminal record fared better than African-Americans without a criminal record. Given the fact that African-

Americans are being incarcerated at rates disproportionate to their proportion of the population, it is evident that they are further discriminated against in the workplace.

Similarly to being discriminated in the workplace, there are dire consequences for being convicted of a drug violation within schools. Given the state of the economy, it comes as no surprise that a majority of individuals are in school with the assistance of financial aid. Boyd (2001) notes that under the Higher Education Act, created by President Johnson in 1965, any drug conviction blocks or delays all federal education assistance, including loans and work-study programs. This notion is important to comprehend given the fact that the law requires merely a conviction, not a prison sentence. In order to better understand the severity of this issue, it is essential to compare these crimes with other crimes that would still deem a student candidate for financial aid. For example, murder and rape do not render a person ineligible; someone could even burn a nursery or bomb a federal building and still receive financial aid (Boyd, 2001). Although it appears that the latter incidences are few and far between when compared to drug violations, they exemplify the severity of the repercussions of minor drug offenses. According to Tannenbaum (1938), this dramatization of evil can be extremely blown out of proportion when it comes to drug offenses. In essence, the stigma of a drug arrest, especially if followed by a conviction, limits employment, education, and housing opportunities (Human Rights Watch, 2009).

Given the discrimination in schools and in the workplace, Robinson (2005) also finds that Constitutional protections are eroded upon reentering society. A very important example of this statement is the right to vote. According to Bobo and Thompson (2006), in many states a felony conviction not only means losing the right to vote for the length of a term of incarceration; it can also mean a permanent loss of voting rights. Boyd (2001) goes further

declaring that nearly two million African-Americans are affected by felon disenfranchisement laws. According to Murphy, Newmark, and Ardoin (2006) the restoration of felons' voting rights could have profound impacts in the election of politicians sympathetic to the concern of this group (p. 3). The clearest example of the detrimental effects of felon disenfranchisement laws can be viewed in the *Florida Bush v. Gore* election. Uggan and Manza (2002) report that Al Gore would have likely beaten George Bush in 2002 had any number of disenfranchised groups had the right to vote in that election. The underlying message is the fact that millions of African-Americans are unable to have their voices heard in political campaigns. They are unable to vote for candidates that will work for them; therefore, their opinions and positions in life are not taken into consideration. Small (2001) reiterates this point in saying that the government has sent a message that it prefers to incarcerate black and brown youth for drug offenses where sanctions are in place that are seldom applied to other criminal offenses.

Coinciding with the notion that the war on drugs has eroded several Constitutional protections, Human Rights Watch (2010) states that:

Anti-drug efforts have shredded the 4th amendment to the US constitution on search and seizure, with the courts permitting ever-more-intrusive police activities against those suspected of carrying or selling drugs. The eighth amendment's prohibition on cruel punishments has been diluted by mandatory draconian sentences for minor drug crimes. In courts swamped with hundreds of thousands of low-level drug cases, rapid fire plea bargains pass for justice (p. 1).

Mandatory sentencing of drug offenders can be blamed for some of the release of violent offenders from prisons each year. Because many drug offenders receive mandatory sentences, overburdened correctional facilities cannot release drug offenders early. Instead, more serious offenders must be released, including violent criminals (Robinson & Scherlen, 2007, p. 176).

The people who are hurt the most by the failure of the criminal justice system, and the war on drugs in particular, are the individuals who are least capable to change current policy. Individuals who happen to be in positions to change policy are not the ones seriously harmed by its failure. Reiman (1998) reports that serious criminal behavior is also widespread among middle- and upper-class individuals, although these individuals are rarely, if ever arrested. Similarly, Robinson and Murphy (2008) report that the most harmful acts committed by those in positions of power are often overlooked in an effort to remain tough on street crime. The media aids in this endeavor given the fact that they are responsible for creating moral panics around the issue of drug use that leads ordinary citizens to believe that drugs are the most important issue. As has been demonstrated, the war on drugs has been fought primarily in poor minority communities, leaving these individuals to feel the greatest pain.

According to Baum (1996), the war on drugs frequently makes drug problems worse; inspiring people to import, sell, and use ever-stronger drugs in ever more dangerous ways (p. xii). In other words, individuals are willing to go to desperate measures to obtain drugs that are deemed illegal. More specifically, the war on drugs has driven the drug trade underground, creating a violent illicit market that is responsible for far too many lost lives and broken communities (Drug Policy Alliance, 2011). If anything, the stabilization of the

illegal drug trade is a sign of the failure of a long-standing justice policy, namely, the so-called war on drugs (Reiman, 1998, p.1). What is of paramount importance to realize lies within the notion that the drugs most commonly consumed by Americans – alcohol and cigarettes – are not combatted to the same degree as are illicit drugs. In fact, these most deadly drugs remain legal in the United States. The number of deaths caused by all illicit drugs combined is approximately 19,000 each year, versus 440,000 for tobacco (Robinson, 2005, p. 72).

Perhaps most problematic within the war on drugs is the issue of spending and allocation of resources. Within the past forty years, the U.S. government has spent well over \$2.5 trillion dollars fighting the war on drugs (Suddath, 2009). A staggering total of \$521 billion has been spent to arrest and incarcerate drug offenders, including 10 million people whose crime was nothing more than possession of marijuana (Human Rights Watch, 2010). In 2003 alone, more than \$11 billion was spent on the war against drugs with the budget steadily increasing each year (Moore & Elkavich, 2008, p. 784). In fact, in more recent years, this number has increased by over \$4 million dollars. According to the ONDCP (2011b), the U.S. federal government spent over \$15 billion in 2010 on the War on Drugs, a rate of about \$500 per second. Furthermore, state and local governments are spending another \$30 billion on the offensive against drugs (Moore & Elkavich, 2008). More pointedly, the Pew Center on the States (2008) notes that from 1987 to 2007, collective state spending on corrections rose 127 percent from \$10.6 billion to more than \$44 billion. These numbers are simply astonishing.

It is evident that, when our economy is at such a fragile state, the government should be spending and allocating resources only on the most important issues. The drug war is

responsible for hundreds of billions of wasted tax dollars and misallocated government spending, as well as devastating human costs that far outweigh the damage caused by drugs alone (Drug Policy Alliance, 2011). The costs of the war on drugs can also be felt among urban and minority communities who lose individuals on a daily basis in the government's efforts to combat drug use. Due to the fact that significant progress has yet to be realized, with regards to the war on drugs, we should instead look towards other alternatives. In simpler terms, Reiman (1998) states that, "it's time we take the money we are wasting in the 'war on drugs' and spend it on public education instead" (p. 44).

GOALS OF THE CURRENT OFFICE OF NATIONAL DRUG CONTROL POLICY

Given the realities that have arisen as a result of the war on drugs, we must now question the extent of the issues. In other words, has there been any positive change within the drug war in the near past? Created in 1988, the Office of National Drug Control Policy was set in place to tackle the war on drugs (2011a). According to the latest National Drug Control Strategy, President Obama has taken a marked departure away from previous approaches to drug policy, as can best be viewed with regards to the Fair Sentencing Act recently created. In fact, according to the ONDCP (2011a), the Obama administration declared that they would not use the term “war on drugs,” as it is “counter-productive.” Within the National Drug Control Strategy there are several goals in place in order to help alleviate the drug problem. These goals include:

- Strengthening efforts to prevent drug use in our communities
- Seeking early intervention opportunities in health care
- Integrating treatment for substance use disorders into mainstream healthcare and expanding support for recovery
- Breaking the cycle of drug use, crime, delinquency, and incarceration
- Disrupting domestic drug trafficking and production
- Strengthening international partnerships
- Improving information systems for analysis, assessment, and local management

The goals offered by the ONDCP seem to signify a change in the current state of affairs within the war on drugs. For the first time, there seems to be an emphasis placed on recovery

and rehabilitation, rather than punitive means. Although it may take time to see any significant change, the goals serve as a reference point in determining what methods have worked, what methods need to be revisited, and what methods should be abolished.

In 2010, the overall U.S. prison population declined for the first time since 1972 (BJS, 2011). More specifically, during 2010, prison releases (708,677) exceeded prison admissions (703,798) for the first time since the Bureau of Justice Statistics began collecting jurisdictional data in 1977 (BJS, 2011). Increasingly important is the fact that in the last fiscal year, the Obama Administration spent \$10.4 billion on drug prevention and treatment programs compared to \$9.2 billion on domestic drug enforcement (ONDCP, 2011b) (see Figure 5).

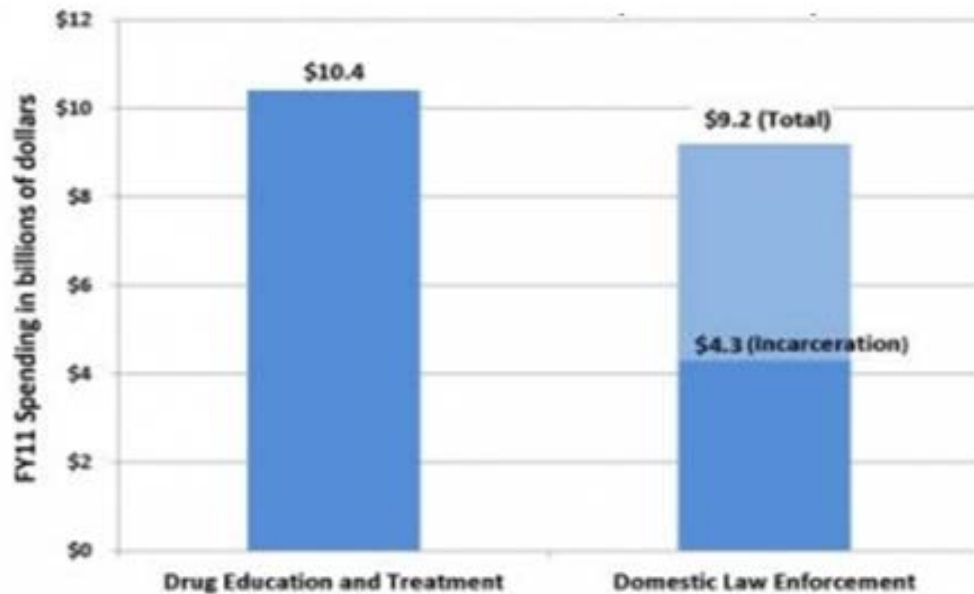


Figure 5: Federal Drug Control Spending on Prevention, Treatment, and Domestic Enforcement (FY11 Enacted)

Source: Office of National Drug Control Policy, 2011

Therefore, it is clear that slight progress has been made within the costly war on drugs. With more of an effort placed on treatment rather than punitive punishment, there is hope that the nation will continue to see progress in a positive direction.

CONCLUSION

It is of paramount importance that we realize there is a serious problem within the war on drugs. Not only is the United States spending millions of dollars each year fighting a war with no clear enemy, its policy is also jeopardizing the life and liberty of millions of individuals. It is clearly evident that the drug war has failed in its mission to eliminate the drug problem. As stated by Banks (2003), the drug war does more harm than good, especially in light of its effects on disadvantaged racial groups. As has been demonstrated by data, African-Americans are overrepresented throughout the entire criminal justice system. Now, we must find alternative solutions to a problem that continues to grow. In comparing the ideals of the drug war to its reality, we are able to view a system that clearly needs revision.

Beckett et al. (2005) note that the images and popular discussions in the 1980s appear to have had important institutional consequences beyond the adoption of federal sentencing laws, and continue to shape both popular and police perceptions of drug users. The historical record of the war on drugs implies that the methods being enforced in the past have not worked to end the drug problem. Over the past forty years, the expenditure of hundreds of billions of dollars has done little to prevent drugs from reaching those who want them and has had scant impact on consumer demand (Human Rights Watch, 2010). What needs to be accomplished now is the education of the public in regards to the real war on drugs and who the enemies of this war are. Although advocating an end to the drug war has begun to pick up momentum, and some positive changes have occurred, it is of paramount importance that

we continue in educating the public and shedding light on the long-lasting effects of the drug war.

The war on drugs has not only failed society as a whole, but it has also failed the individuals that have gone through the criminal justice system. As stated by Bobo and Thompson (2006), we are now a society characterized by a racialized mass incarceration; we do not have a criminal justice system free of the taint of race bias. It is our most defenseless members of society that have suffered at the hands of the war on drugs. Jamie Fellner, senior counsel to the U.S. Program at Human Rights Watch (2009), states, “Jim Crow may be dead, but the drug war has never been color-blind. Although whites and blacks use and sell drugs, the heavy hand of the law is more likely to fall on the black shoulders.” Tonry (1995) argues that blacks have borne the brunt of the war on drugs and, more specifically, the recent blackening of American’s prison population is the product of malign neglect of the war’s effects on black America (p. 115).

In sum, we have an antidrug policy that is failing at its own goals and succeeding only in adding to crime (Reiman, 1998, p. 43). As previously mentioned, the pyrrhic defeat theory aids in explaining the failure of the drug war. According to the pyrrhic defeat theory, the failure of the drug war can actually be seen as a success for those in power who are able to manipulate laws and policies. It is now time to question how much longer this will go on. There was hope that the Obama administration would rethink the government’s approach to the drug problem; President Obama’s new drug plan changes the rhetoric – no more military metaphors for anti-drug efforts – but the war isn’t over (Human Rights Watch, 2010).

ALTERNATIVE PROGRAMS

Given the severe problems underlying the war on drugs, the first step for positive change is to reevaluate the current strategies for fighting drugs. Human Rights Watch (2000) reports that policy makers in each state, as well as in the federal government, should reassess existing public policy approaches to drug use and sales to identify more equitable but still effective options. In other words, instead of taking punitive measures, we should be focused on actually combatting the problem of drug use in America. In particular, policy makers should examine the costs and benefits of relying heavily on penal sanctions to address drug use and drug trafficking and should look closely at law enforcement strategies to identify ways to make them more racially equitable (Human Rights Watch, 2000). As has been demonstrated, the war on drugs carries with it severe racial inequalities that further need to be addressed.

While the federal government spends billions trying to reduce the demand for illegal drugs through prohibition, treatment consistently proves to be a more effective, cheaper and more humane way to lower the demand for illegal drugs (Drug Policy Alliance, 2011). Given the fact that a substantial decline in drug use has yet to be realized, it is time to turn to other alternatives if the aim of the war on drugs is to eliminate drug dependencies and use. Further exemplifying this notion, Human Rights Watch (2009) reports that a more effective, less destructive drug policy would prioritize treatment, education, and positive social investments in poor communities over arrest and incarceration. If the concerned about drug

use and abuse revolves around the well-being of individuals with drug dependencies, other alternatives should be employed rather than settling for strictly punitive measures.

Human Rights Watch (2000) states that each state as well as the federal government should subject current and proposed drug policies to strict scrutiny and modify those that cause significant, unwarranted racial disparities; In addition, the state and federal governments should:

- Eliminate mandatory minimum sentencing laws that require prison sentences based on the quantity of the drug sold and the existence of a prior record. Offenders who differ in terms of conduct, danger to the community, culpability, and other ways relevant to the purposes of sentencing should not be treated identically. Judges should be able to exercise their informed judgment in crafting effective and proportionate sentences in each case.
- Increase the availability and use of alternative sanctions for nonviolent drug offenders. Drug defendants convicted of nonviolent offenses should ordinarily not be given prison sentences, even if they are repeat offenders, unless they have caused or threatened specific, serious harm -- for example, when drug sales are made to children -- or if they have upper level roles in drug distribution organizations.
- Increase the use of special drug courts in which addicted offenders are given the opportunity to complete court supervised substance abuse treatment instead of being sentenced to prison.
- Increase the availability of substance abuse treatment and prevention outreach in the community as well as in jails and prisons.
- Redirect law enforcement and prosecution resources to emphasize the arrest, prosecution, and incarceration of importers, manufacturers, and major distributors, e.g., drug kingpins, rather than low level offenders and street level retail dealers.
- Eliminate racial profiling and require police to keep and make public statistics on the reason for all stops and searches and the race of the persons targeted.
- Require police to keep and make public statistics on the race of arrested drug offenders and the location of the arrests.

Although measures have recently been taken to combat some of these issues, there must be consistency with the measures being taken. If the elimination of race within the war on drugs is the issue, every aspect within the criminal justice system should be observed. In essence it must begin with the laws being set in place, on to the policing of certain offenders, to the sentencing phase of those arrested, and finally on to the incarceration and reintegration phases of an individual's experience. It need be noted that all of these concepts are interrelated, having severe consequences for the next sequence within the criminal justice system.

Appendix A

**Table 1: US Adult
Drug Arrests by
Race, 1980-2007**

Year	Total Arrests	White	Black	Other Races**	Percent White*	Percent Black*	Percent Other*
1980	376,155	272,341	100,671	3,143	72%	27%	1%
1981	448,255	322,250	122,076	3,929	72%	27%	1%
1982	487,160	340,582	142,254	4,324	70%	29%	1%
1983	543,259	366,911	171,144	5,204	68%	32%	1%
1984	557,229	372,470	179,955	4,804	67%	32%	1%
1985	640,626	427,579	206,830	6,217	67%	32%	1%
1986	656,434	421,803	229,179	5,452	64%	35%	1%
1987	733,908	463,213	264,958	5,737	63%	36%	1%
1988	781,745	465,646	309,512	6,587	60%	40%	1%
1989	981,381	567,163	408,853	5,365	58%	42%	1%
1990	835,321	490,412	338,717	6,192	59%	41%	1%
1991	735,294	422,166	306,932	6,196	57%	42%	1%
1992	892,371	519,966	364,587	7,818	58%	41%	1%
1993	901,860	530,237	363,582	8,041	59%	40%	1%
1994	988,542	599,663	379,741	9,138	61%	38%	1%
1995	1,073,480	642,540	420,731	10,209	60%	39%	1%
1996	996,809	599,512	386,906	10,391	60%	39%	1%
1997	1,078,745	645,277	421,348	12,120	60%	39%	1%
1998	1,098,784	651,137	436,048	11,599	59%	40%	1%
1999	1,068,525	645,288	411,400	11,837	60%	39%	1%
2000	1,109,300	673,752	422,669	12,879	61%	38%	1%
2001	1,107,140	674,323	419,781	13,036	61%	38%	1%
2002	1,046,149	665,276	367,424	13,449	64%	35%	1%
2003	1,239,337	811,574	410,533	17,230	65%	33%	1%
2004	1,159,979	752,992	392,240	14,747	65%	34%	1%
2005	1,235,355	795,726	423,440	16,189	64%	34%	1%
2006	1,270,324	802,583	451,506	16,235	63%	36%	1%
2007	1,382,783	880,742	485,054	16,987	64%	35%	1%

*Due to rounding, totals may not equal 100 percent.

**The FBI classifies "other races" as American Indians, Alaskan Natives, Asians and Pacific Islanders.

Appendix B

Table 2. Drug Offenders as Percentage of Admissions by Race to State Prison

State	Black	White
Alabama	31%	20%
Arkansas	30%	28%
California	36%	38%
Colorado	32%	15%
Florida	33%	13%
Georgia	33%	19%
Hawaii	41%	15%
Illinois	47%	15%
Iowa	24%	13%
Kentucky	45%	19%
Louisiana	37%	21%
Maine	47%	9%
Maryland	40%	18%
Michigan	29%	10%
Minnesota	21%	13%
Mississippi	32%	21%
Missouri	26%	18%
Nebraska	28%	22%
Nevada	25%	16%
New Hampshire	61%	18%
New Jersey	52%	31%
New York	48%	40%
N. Carolina	33%	10%
N. Dakota	20%	21%
Ohio	40%	19%
Oklahoma	34%	26%
Oregon	16%	13%
Pennsylvania	34%	27%
S. Carolina	30%	10%
S. Dakota	25%	22%
Tennessee	40%	15%
Texas	38%	19%
Utah	30%	30%
Virginia	38%	16%
Washington	51%	33%
W. Virginia	44%	9%
Wisconsin	37%	17%
National	38%	24%

Appendix C

Table 3. Sentencing Table (in months of imprisonment)

Offense Level	Criminal History Category (Criminal History Points)					
	I (0 or 1)	II (2 or 3)	III (4, 5, 6)	IV (7, 8, 9)	V (10, 11, 12)	VI (13 or more)
1	0-6	0-6	0-6	0-6	0-6	0-6
2	0-6	0-6	0-6	0-6	0-6	1-7
3	0-6	0-6	0-6	0-6	2-8	3-9
4	0-6	0-6	0-6	2-8	4-10	6-12
5	0-6	0-6	1-7	4-10	6-12	9-15
6	0-6	1-7	2-8	6-12	9-15	12-18
7	0-6	2-8	4-10	8-14	12-18	15-21
8	0-6	4-10	6-12	10-16	15-21	18-24
9	4-10	6-12	8-14	12-18	18-24	21-27
10	6-12	8-14	10-16	15-21	21-27	24-30
11	8-14	10-16	12-18	18-24	24-30	27-33
12	10-16	12-18	15-21	21-27	27-33	30-37
13	12-18	15-21	18-24	24-30	30-37	33-41
14	15-21	18-24	21-27	27-33	33-41	37-46
15	18-24	21-27	24-30	30-37	37-46	41-51
16	21-27	24-30	27-33	33-41	41-51	46-57
17	24-30	27-33	30-37	37-46	46-57	51-63
18	27-33	30-37	33-41	41-51	51-63	57-71
19	30-37	33-41	37-46	46-57	57-71	63-78
20	33-41	37-46	41-51	51-63	63-78	70-87

21	37-46	41-51	46-57	57-71	70-87	77-96
22	41-51	46-57	51-63	63-78	77-96	84-105
23	46-57	51-63	57-71	70-87	84-105	92-115
24	51-63	57-71	63-78	77-96	92-115	100-125
25	57-71	63-78	70-87	84-105	100-125	110-137
26	63-78	70-87	78-97	92-115	110-137	120-150
27	70-87	78-97	87-108	100-125	120-150	130-162
28	78-97	87-108	97-121	110-137	130-162	140-175
29	87-108	97-121	108-135	121-151	140-175	151-188
30	97-121	108-135	121-151	135-168	151-188	168-210
31	108-135	121-151	135-168	151-188	168-210	188-235
32	121-151	135-168	151-188	168-210	188-235	210-262
33	135-168	151-188	168-210	188-235	210-262	235-293
34	151-188	168-210	188-235	210-262	235-293	262-327
35	168-210	188-235	210-262	235-293	262-327	292-365
36	188-235	210-262	235-293	262-327	292-365	324-405
37	210-262	235-293	262-327	292-365	324-405	360-life
38	235-293	262-327	292-365	324-405	360-life	360-life
39	262-327	292-365	324-405	360-life	360-life	360-life
40	292-365	324-405	360-life	360-life	360-life	360-life
41	324-405	360-life	360-life	360-life	360-life	360-life
42	360-life	360-life	360-life	360-life	360-life	360-life
43	life	life	life	life	life	life

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