



Crime & Punishment: The U.S. Criminal Justice System and Punitive Drug Laws

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

Domestically, U.S. drug policy is fueled by a historical bias against people of color used to justify their disproportionate presence in the penal system. Despite the fact that drug use is more or less consistent across racial lines, many punitive drug laws are based in part on the belief that certain communities of color commonly use certain substances. Such was the case with opium and Chinese immigrants, cannabis and Mexicans, and cocaine and African Americans.

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

Enforcement of the drug laws is the primary motivating force behind racial profiling activity. When cars are stopped and searched at random – the randomization usually creates an opportunity for race-based decision making – officers are rarely looking for evidence of crimes such as shoplifting, burglary or murder. Instead, they are searching for drugs or other evidence of drug-related activity.

A 1996 study of traffic stops along Interstate 95 in Maryland showed that blacks constituted 72.9 percent of all drivers stopped and searched by the state police, though they made up only 17.5 percent of the total drivers, and were no more likely than their white counterparts to be violating the law. The same study demonstrated that while people of color (African American, Latino, Asian, other) constituted only 21 percent of the total traffic offenses on the road, they constituted 80 percent of the stops made. Lawsuits alleging racial profiling of motorists have been filed in Maryland, New Jersey, Illinois, Indiana, Pennsylvania, Florida and other states.¹

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

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

During the 1970s and 1980s, sentences for drug offenses increased dramatically for three reasons. First, Congress and many state legislatures passed mandatory minimum sentencing and “three strikes” or “habitual offender” laws that require judges to hand out fixed sentences to people convicted of certain crimes. Second, “truth in

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sentencing” laws and other laws abolishing parole release systems were enacted. Third, the application of conspiracy provisions for drug offenses has made it possible to convict and sentence any individual as a major player or director of a drug-supply network, even if that particular person knew of and was involved in only a small part of the operation. These policies resulted in a dramatic increase in actual time served by drug offenders.

While the intent was to punish high-level drug offenders, such as drug kingpins and major dealers, the laws have had the opposite effect – high-level drug offenders who have access to more information can plea bargain their way to reduced sentences, while low-level offenders with no information to trade for leniency are sentenced to unusually long terms. These “snitch” provisions provide an incentive for arrestees to provide as much information about others as possible – whether it is true or not – in order to escape long sentences themselves, thus decreasing the reliability of evidence used to convict people.

For different reasons, federal criminal sentencing laws impact certain communities of color more than other racial and ethnic groups. For example, federal drug sentencing laws – some of the harshest sentencing laws in the country – expose Native American offenders to longer sentences because all crimes committed on federally recognized tribal lands are subject to the provisions and sentencing mandates of federal criminal law instead of state criminal law. Mandatory minimum sentences make African American drug law violators more likely to be incarcerated, and for longer periods of time, than their white counterparts. Under legislation passed by Congress in 1986, it takes 1/100 as much crack cocaine as powder cocaine to trigger equal mandatory minimum sentences. As scientists and courts alike have recognized, there is no rational basis for distinguishing between crack cocaine and powder cocaine. Nonetheless, in 1994, 90 percent of persons convicted of federal crack cocaine offenses were black, 6 percent Latino, and less than 4 percent white. Federal powder cocaine offenders were 30 percent black, 43 percent Latino, and 26 percent white.ⁱⁱ

According to a study by the RAND Corp., “though it is too early to make a final judgment, RAND found that three strikes and ‘truth-in-sentencing’ laws have had little significant impact on crime and arrest rates. According to the Uniform Crime Reports, states with neither a three strikes nor a truth-in-sentencing law had the lowest rates of index crimes, whereas index crime rates were highest in states with both types of get-tough laws.”ⁱⁱⁱ

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

As a result of the reliance on incarceration as the principal means of responding to drugs in the United States, there are now more than 2 million Americans in the country’s state and federal prisons – one quarter of them for drug offenses. The United States imprisons more of its citizens than any other nation in the world. Blacks, Latinos and Native Americans are over-represented throughout the U.S. prison system. However, nowhere in the criminal justice system is the disparity between the arrest, detention, conviction and sentencing of people of color and whites more brutally obvious than in the case of the war on drugs.

The rate of drug admissions to state prison for black men is 13 times greater than the rate for white men. A recent report by Human Rights Watch found that while drug use is consistent across all racial groups, blacks and Latinos are far more likely to be arrested, prosecuted and given long sentences for drug offenses. Blacks constitute 13 percent of all drug users, but 35 percent of those arrested for drug possession; 55 percent convicted; and 74 percent incarcerated.^{iv} Nationally, Latinos comprise almost half of those arrested for marijuana offenses^v and Native Americans comprise almost 2/3 of those prosecuted for criminal offenses in federal courts.^{vi}

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

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

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Almost 41.4 million African American males, or 14 percent of the adult black male population, are currently unable to vote as a result of felony convictions. Black men represent more than 36 percent of the total disenfranchised male population in the United States although they make up less than 15 percent of American males.^{vii} In 1995, one in three black men between the ages of 23 and 29 was either in jail, in prison or on probation or parole,^{viii} most of them therefore unable to vote.

Prisoners are counted by the national census as residents of the towns in which they are imprisoned, leaving their hometowns – often urban communities of color – with diminished political power and government funding. Since voting representation and the distribution of government resources are determined by population, drug law convicts of color bring a transfer of public funds and electoral influence from their home communities, which are generally urban and often poor, to the mostly rural towns in which they are imprisoned.^{ix}

The effects of these discrepancies are huge, resulting in decreased trust of the criminal justice system within communities of color. When someone is removed from their community, there are ramifications both for that individual and for the community as a whole. There are fewer people there to work, to raise children, to buy goods for sale, to vote and to be part of community and religious institutions.

How else have families and communities of color been impacted by drug law enforcement?

As more and more people of color face incarceration due to drug charges, the collateral effects on their families and communities are numerous. Increasingly, children are raised by either one parent or by grandparents or other extended family members because of the incarceration of a custodial parent. If they have no family members available to care for them, these children are integrated into a foster care system that is overburdened, under-supervised and expensive. Studies show that children who are separated from their families do not perform as well in school, have greater physical and mental health problems and are at higher risk for criminal justice involvement. Finally, when parents return to their communities, their drug convictions often make it difficult to find work or qualify for certain benefits, affecting their ability to reunite with and care for their children. Instead of facilitating healthier lifestyles, drug law enforcement perpetuates disintegration of family and community structures and creates cycles of economic and community struggle that many find difficult, if not impossible, to overcome.

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

Affluent, predominantly white suburban communities have long recognized that the drug war need not be fought only on the incarceration front. Alternatives such as drug treatment and education are mainstays of white, middle-class efforts to reduce drug abuse in their neighborhoods. A strategy centered on such demand reduction efforts makes sense: The RAND Corp. has estimated that investing an additional \$1 million in drug treatment programs would reduce serious crime by 15 times more than enacting mandatory sentences for drug offenders.^x An effective, alternative approach to drugs would focus on the actual health and safety of communities and families and provide an appropriate array of services and resources so that each individual has the opportunity to realize his or her full potential.

ⁱ Harris, David. *Driving While Black: Racial Profiling on our Nation's Highways*. ACLU Special Report, June 1999. <http://www.aclu.org/profiling/report/>.

ⁱⁱ US Sentencing Commission, Special Report to the Congress: Cocaine and Federal Sentencing Policy (Washington, DC: US Sentencing Commission, April 1997), p. 8.

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ⁱⁱⁱ Turner, S., et al., Rand Corp. Criminal Justice Program, Justice Research and Statistics Association, *The Impact of Truth-in-Sentencing and Three Strikes Legislation: Prison Populations, State Budgets, and Crime Rates*, Stanford Law and Policy Review, Vol. 11, No. 1, Winter 1999.

^{iv} Human Rights Watch, *Punishment and Prejudice: Racial Disparities in the Criminal Justice System*, May 2000, Vol. 12, No. 2 (G). <http://www.hrw.org/reports/2000/usa/>.

^v John D. Couriel, *Keep It Real: Recasting the drug debate in terms of accountability and opportunity*. Harvard Political Review, Summer 2000.

^{vi} U.S. Department of Justice, Bureau of Justice Statistics, "American Indians are Violent Crime Victims at Double the Rate of the General Population," news release, Feb. 14, 1999. www.ojp.usdoj.gov/bjs/
The Sentencing Project, *Losing The Vote: The Impact of Felony Disenfranchisement Laws in the United States*, October 1998.

^{viii} Human Rights Watch. *Punishment and Prejudice: Racial Disparities in the War on Drugs*, May 2000, Vol. 12, No. 2.

^{ix} "Prisoner Nation; Prisons Skew Census Results," *The Nation*, July 17, 2000, No. 3, Vol. 271; Pg. 5.

^x Caulkins, JP, et al., *Mandatory Minimum Drug Sentences: Throwing Away the Key or the Taxpayer's Money*, Rand, Santa Monica, 1997, p. xxiv.

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