

U.S. Drug Control Policy: Clinging to an Outdated Perspective

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Since President Nixon declared that the U.S. was to wage an “all out war” against the use of illegal drugs, the “war on drugs” has been part of the American vocabulary as well as domestic policy. The 1970 Comprehensive Drug Abuse Prevention and Control Act consolidated all previous legislation concerning drug control, while the Controlled Substances Act established the legality of substances with a five-category system based on medical value and addictiveness of the drug (pbs.org). For the most part, however, early efforts were organizational in nature; the domestic “war” would be fought more than a decade later. It is important to understand how U.S. drug control policy, embodied by the war analogy, has developed over the last 20 years because this development continues to define policy into the 21st Century.

Although analysts may debate when the war on drugs officially began, there is no question that it escalated in the 1980s. Within the span of two years, Congress passed two major pieces of legislation that fundamentally altered the function of American drug control institutions. The Drug Abuse Acts of 1986 and 1988 were intended to provide law enforcement organizations with the financial and legal tools to eliminate drug use in America. While some analysts have viewed this legislation as a byproduct of an influential law enforcement bureaucracy, there is considerable evidence that democratic institutions were responding to a strong expression of public opinion. Americans recognized the increasing danger of drug use in the early 1980s and demanded a “tough” response.

In fact, the “tough” approach to drug control remained unopposed in American politics throughout the 1980s, as representatives feared looking “soft” on the drug problem. Despite the initial success of this approach, however, the drug war has not been successful over the long-term. Over a decade later, Americans have come to recognize that drug use continues even though billions of dollars are spent on enforcement efforts every year and millions of Americans have been incarcerated. Public opinion has shifted drastically and Americans are now calling for treatment programs to attack addiction, instead waging war on the offenders.

Unfortunately for the success of U.S. drug control policy, change is not taking place. The approach of the 1980s has created an extensive drug enforcement bureaucracy with a vested interest in the continuation of the “tough” approach. The Office of National Drug Control Policy has been mandated to dictate a national strategy and assure that it is executed with the appropriate budget. This broad mandate has given this cabinet-level department the authority to avoid legislative oversight and continue to enforce policies established in the late 1980s. Executive branch politics further limit the opportunity for meaningful reform and U.S. drug control policy remains limited by the philosophy of another era.

Existing Literature

The punitive nature of the drug control policies established in the 1980s led analysts to conclude that policy has been dictated by law enforcement officials. By focusing on a specific change in the early 1980s, David Rasmussen and Bruce Benson (1994) theorize that U.S. drug control policy is the product of an influential law-enforcement bureaucracy. Throughout the history of U.S. drug control, federal officials have taken the property of convicted drug offenders to raise the cost of drug distribution and offset the costs of law enforcement. The 1984 Comprehensive Crime Act significantly broadened the ability of law enforcement personnel to confiscate property by allowing federal officials to “adopt” proceeds of state and local forfeitures (Rasmussen 132). Moreover, the burden of proof to con-

fiscate property was reduced from “beyond a reasonable doubt” before a jury, to mere “probable cause” before the court (Rasmussen 136, Klinger par. 19). For the first time, state and local bureaucrats gained the ability to self-finance, while federal bureaucrats increased their discretionary funding.

According to Rasmussen and Benson, this legislation expanded both formal and informal connections between branches and levels of the law enforcement bureaucracy. As in all bureaucracies, law enforcement officials naturally seek to maximize their own budgets and they gained a new method to advance their own well being through these emerging networks (Rasmussen 133). In the absence of competition over the ownership of the drug problem, bureaucrats were able to “selectively distort” the issue (129). Between 1984 and 1988 all levels of the law enforcement apparatus promulgated the connection between drugs and crime, effectively increasing the demand for their services. The effectiveness of the law enforcement approach was demonstrated by arrest figures, while the constant need for increased funding was demonstrated by continued drug use (131). Every increase in specified funding from the legislature was accompanied by a considerable increase in discretionary funding through asset forfeiture.

As a corollary to the theory provided by Rasmussen and Benson, Steven Belenko (1993) argues that media coverage beginning in 1986 shaped the public’s perception of the drug problem in America and essentially manufactured the war on drugs. According to Belenko, the key to this manipulation was the growing use of a form of cocaine known as “crack” which was mischaracterized as a “plague” and an “epidemic” in America (Belenko 23). Although initial reports about the drug surfaced in 1984 and 1985, crack became the “issue of the year” for Time magazine in 1986 when numerous city police departments took notice of the drug’s effect on the inner city. Three major television networks aired documentaries on crack in 1986 and the “media blitz” continued into the late 1980s (25).

While these theories are useful in understanding unique aspects of the politics of drug enforcement, they fail to properly account for the numerous political factors that have shaped U.S. drug control policy. In his 1992 study, “The Politics of Drug Abuse: Laws, Implementation and Consequences,” Kenneth Meier demonstrates that environmental forces play an important role in dictating state drug control policies. While findings at the state level are not necessarily fully applicable to federal legislation, this study suggests that numerous factors are responsible for major drug control efforts. In Meier’s study, the estimated demand for drugs within a given state was shown to have a strong correlation to laws mandating fines and jail time for marijuana users, while demand was found to have a negative correlation to decriminalization. Likewise, a liberal orientation within a state’s voting body was negatively correlated with drug laws that focus on the imposition of fines as well as those that focus on users and dealers. In other words, legislatures readily respond to the seriousness of the drug problem within a given population and follow the policy preference of their constituents (Meier 55).

Meier’s findings also present numerous meaningful relationships concerning bureaucratic forces and drug control policy. Police employment was found to have a strong negative correlation to the imposition of light penalties for marijuana related offenses, but did not register as a meaningful determinant of fines, jail or decriminalization. The drug treatment capacity of a given state, however, was found to have a strong correlation to decriminalization and the imposition of light penalties for marijuana related offenses, as well as a negative correlation to fines and jail (Meier 53). When the legal issue in question includes more serious drugs, states are more likely to respond to bureaucratic influence, but other factors remain relevant. Police employment was found to be strongly correlated with laws focusing on both users and dealers, while drug treatment was negatively correlated with laws focusing on dealers (55). It is apparent that law enforcement officials must contend with other bureaucracies and are unable to easily impose their policy preference on lawmakers.

This study calls the simplicity of Rasmussen and Benson's theory into question on several grounds. First, their theory fails to account for governmental responsiveness to drug use. These authors claim that the legislation of 1986 and 1988 was caused by bureaucratic pressure; Meier has demonstrated that legislatures readily respond to drug control as a salient political issue. Likewise, Meier's study suggests that the law-enforcement bureaucracy is not in a position to dictate the passage of drug control legislation. It does appear, however, that issues relating to more serious drugs could provide law enforcement officials with greater influence in the creation of policy concerning users and dealers. While it makes intuitive sense for law enforcement officials to act in a leadership role in confronting the most dangerous narcotics, this does not mean that this bureaucracy was able to manipulate U.S. drug control policy. One must consider the entirety of the political environment to fully understand the situation faced by lawmakers in the mid-1980s.

Policy Environment of the 1980s: Supply Reduction

A considerable amount of evidence suggests that drug use was becoming increasingly dangerous in the early 1980s. This is especially true of more serious drugs, including cocaine. Between 1982 and 1985, the number of current cocaine users increased by over 25% (ONDCP 1999). During the same period, the segment of high school seniors that had used cocaine within the past month rose from 5 to 6.7%, an increase of one-third (SAMHSA, Figure 4). More importantly, the increase in use was made visible by the harmful effects of the drug. Between 1982 and 1985 the number of emergency room visits related to cocaine increased from 8,000 to almost 30,000, while the number of cocaine related deaths increased by 20%. By 1988, the emergency room figure eclipsed 100,000 and the death rate had risen by 50% (Murphy, Table 20; SAMHSA, Figure 6).

One cannot ignore the possibility that the public reacted rationally to this threat. In fact, the strong expression of public opinion that eventually led to the legislation of 1986 and 1988 preceded the "media blitz" of 1986. Americans began to respond to the negative trends in drug use prior to any significant media framing that could have been influenced by the law-enforcement bureaucracy. Survey data indicate that 96% of Americans classified drug use as a "very serious" or "somewhat serious" problem in 1982ⁱ, while 73% recognized that cocaine use had increased over the last year in 1983ⁱⁱ. The percentage of Americans in favor of the government making a major effort to solve the problems of crime and drugs rose from 77% in 1980ⁱⁱⁱ to 84% in 1984^{iv}. And most importantly, 71% of Americans believed that the government should spend more on the "War on Drugs" in 1984^v. It is important to note that the public was aware of and opposed to the rising use of illegal drugs^{vi} prior to the intensive media attention the issue received in the mid-1980s, because the trend would continue throughout the decade. In 1988, 80% of Americans were "very concerned" about the problem of illegal drugs and 75% feared that the quality of life in their community would be hurt because of this problem^{vii}.

Americans very clearly expressed the policy solution of choice: impose strict penalties for both dealers and users of controlled substances. In 1986, 91% of Americans thought that having stricter prosecution and punishment of drug sellers would be "very effective" or "somewhat effective" in solving the problem of drug abuse^{viii}; and in 1988, 82% of Americans reported that our system had not been tough enough on drug pushers^{ix}. During the same period, 75% of Americans agreed that any use of illegal drugs is unacceptable and should result in criminal prosecution^x, while 87% supported tougher penalties for drug possession^{xi}. Even when the issue was framed in terms of government spending, Americans overwhelmingly supported a punitive approach to drug control. In 1986, 71% of Americans were willing to pay higher taxes to prosecute and punish drug sellers^{xii}, and in 1988, 75% reported that federal spending on combating illegal drugs should be increased^{xiii}.

Two influential studies suggest that such a clear expression of public opinion, on a

major issue such as drug control, is a strong indicator of government policy in the American system. In their 1983 study, "Effects of Public Opinion on Policy," Page and Shapiro demonstrate a substantial congruence between shifts in public opinion and policy change over time. In this analysis, these authors identified key factors that dictate whether or not policy will, in fact, follow public opinion. Page and Shapiro found greater congruence for large-scale social issues than for other issues in the domestic category, suggesting that drug control falls into the more responsive general category. More specifically, issues concerning civil liberties, which include drug control policies, were found to have an 89% congruence rate (Page 182). These authors also found that issues of high political salience were much more likely to produce congruent policy changes. In other words, a strong expression of public opinion, without the presence of large numbers of "no opinion" responses, is likely to be followed by policymakers (181). This too suggests that public opinion dictated drug control policies of the 1980s.

In his 1998 study, "Public Opinion and Public Policy, 1980-1993," Alan Monroe abandons Page and Shapiro's use of congruence in favor of consistency. Monroe compares the policy preference of the majority of Americans to the outcome of numerous issue complexes at one point in time. His findings indicate that 55% of issues examined show consistency between 1980 and 1993, suggesting only a moderately responsive government system during this period (Monroe 12). The findings were similar for responsiveness to crime and punishment issues (50%) and civil rights and liberties (55%). Drug control issues, however, were found to have an impressive 80% consistency rate (26). Based on these studies and survey data concerning drug control preferences in the 1980s, it is reasonable to conclude that lawmakers were responding to the demands of the American public when they passed the Anti-Drug Abuse Acts of 1986 and 1988.

The "tough" approach to drug control demanded by the American public and eventually passed into law by Congress is best articulated as an economic model. Although this approach is usually referred to as "supply reduction," law enforcement is thought to prevent drug use by attacking both the supply and demand sides of the market. An increased effort to arrest and incarcerate drug dealers decreases the total amount of available drugs, raises the price of remaining drugs and decreases the total amount consumed by the public. At the same time, the cost of consuming illegal drugs is increased, as users are deterred by the increased possibility of arrest. The demand for illegal drugs decreases and the public consumes even fewer drugs (Rasmussen 68). Under this theory, it would seem that the severity of punishment and degree of aggressiveness of law enforcement imposed by the government should be directly related to the overall decrease in the use of illegal drugs.

Major Legislation

The supply reduction model served as the theoretical basis for the drug control platforms provided by both parties in the elections of 1986 and 1988. A 1988 USA Today survey taken months before the election is representative of the political environment of the time: 70% of Americans indicated that they would be more likely to vote for a candidate that supports a multi-billion dollar increase in federal funding for additional police, courts, and prisons needed to combat drug users and dealers. Only 22% indicated that they would be less likely to give their support to such a candidate^{xiv}. In both elections, candidates fought to avoid looking "soft" on drug abuse and debate was limited by the need for candidates to show their "toughness" on the issue (Belenko 9). The Anti-Drug Abuse Acts are the result of this environment, as representatives in the legislature and executive rushed to pass extensive drug control measures to appease their constituents.

The Anti-Drug Abuse Act of 1986 passed both houses of Congress by overwhelming margins on October 17, less than three weeks before the midterm congressional elections. The House approved the measure by a vote of 378-16 and the Senate passed it through a

similarly overwhelming voice vote. President Reagan signed the bill into law on October 27. This legislation was the result of less than three months of work, as relevant House committees, led by the Crime Subcommittee of the Judiciary Committee, took up the issue in late July and the Senate followed suit in early August. President Reagan served as a catalyst for meaningful action, as he used a nationally televised speech on August 4 to call for “mobilization” in “what we hope will be the final stage in our national strategy to eradicate drug abuse (1986 CQ 92).” While this legislation was developed by over a dozen committees and affected almost every aspect of American drug control, the most important provisions of the 1986 legislation include penalty standards for the possession or distribution of controlled substances and increased funding for drug control programs.

Under the 1986 legislation, penalties for drug offenses became mandatory and were closely tied to the type and amount of narcotic possessed. For users, fines for simple possession were increased and mandatory sentences of 90 days were imposed for each offense after the second (1986 CQ 98). For street-level distributors, offenses involving 500 grams of cocaine or 100 grams of heroin called for a mandatory prison sentence of five years. For major drug traffickers, offenses involving 5 kilograms of cocaine or 1 kilogram of heroin called for a mandatory sentence of at least 10 years in prison. In each category, mandatory sentences were doubled when the offense resulted in death or serious injury and second offenses of this kind could result in life imprisonment (98). Moreover, mandatory life sentences were imposed for “principal administrators, organizers and leaders” of continuing criminal enterprises. This includes those who gross \$10 million from illegal drug sales over a 12-month period (99).

The vast majority of funding provided by this legislation was allocated to law enforcement programs. In fact, of the \$1.7 billion earmarked to fight drug abuse, only \$231 million went to treatment, education, or prevention efforts (Belenko 14). Most of the additional funding was assigned to massive federal enforcement programs such as the DEA and U.S. Marshall’s Service, as well as court and prison expenses. About \$1 billion was reserved for grants to state and local law enforcement efforts, to be matched on a 25-75 basis by the states (1986 CQ 99).

Considering the salience of the subject matter and gravity of the financial commitment, it is important to note that the majority of debate over the Anti-Drug Abuse Act of 1986 revolved around the degree of discretion that should be given to the expanded law enforcement offices and the severity of punishment needed to achieve results. Neither house of Congress gave serious consideration to whether supply reduction was the best course of action. In the House, partisans quibbled over the total financial package, as Republicans accused the Democrats of trying to solve the drug problem with excessive spending during a period of massive budget deficits (1986 CQ 93). Eventually, every proposed amendment that authorized more funds for anti-drug efforts was approved and every amendment to reduce such expenditures was rejected (95). Both houses also debated measures to authorize the death penalty for drug traffickers, to allow the military to pursue international drug traffickers within U.S. territory and to provide exceptions for the exclusionary rule, based on the Fourth Amendment (95). Although each of these measures was narrowly defeated, this sphere of debate suggests that the “tough” approach was essentially unopposed.

In fact, the “tough” approach to drug control remained unopposed through the 1988 election cycle and candidates followed a familiar pattern: The 1988 Anti-Drug Abuse Act passed both houses of Congress on October 22 and was signed by the President shortly after. The House approved the measure by a vote of 346-11 and the Senate cleared it by a vote of 87-3 (Belenko 17). The primary difference between the two acts can be viewed as the effect of presidential politics. In May of 1988, a Washington Post poll indicated that illegal drug use was the top concern of American voters by a considerable margin (1988 CQ

85). Presidential candidates voiced their opinions on the issue and it became more important than ever for all candidates to emphasize a punitive approach to drug control.

Early in 1988, Democratic presidential candidate Jesse Jackson made drug control one of his top campaign issues and attacked President Reagan for his inability to coordinate and effective attack on drug use. Republican candidate George Bush continually defended the administration, but Republicans found themselves unable to demonstrate success since 1986 (1988 CQ 86). In April of 1988, the Secretary of Health and Human Services met with the President and expressed his concern about the administration's anti-drug efforts:

One of the Democrat candidates for president is getting some of his highest marks for his passionate and creative oratory on the drug epidemic and is poised to steal from our party what has been a traditional Republican issue — law enforcement (86)

Jackson and Bush spoke before Congress in June of 1988 and both supported additional efforts to attack the drug problem through law enforcement. Jackson called for additional funding to local law enforcement programs and the creation of a "drug czar" to coordinate national drug control. Bush called for legislation that would dictate the "certainty and severity" of punishment for both users and dealers, as well as the death penalty for drug dealers convicted of murder (86). Provisions of the Anti-Drug Abuse Act of 1988 represent the aggregate of these mainstream positions, as both parties hoped to claim success on the issue in the upcoming election.

As in 1986, the 1988 Anti-Drug Abuse Act was a massive undertaking that affected numerous aspects of American drug control policy. In addition to the reauthorization of the major programs created in 1986, the most important provisions of this legislation can be generally categorized: funding trends, user accountability, forfeiture development, criminal statutes and the creation of the Office of National Drug Control Policy.

The broad approach used to combat drugs in 1988 actually included extensive funding for treatment and education programs. The largest allocation called for \$1.5 billion in block grants for state treatment programs to be offered based on the population risk and fiscal capacity of a given state (1988 CQ 86). As national trends dictated, however, additional funding was also provided for major drug enforcement efforts. This time around, the INS, FBI, DEA, ATF, Marshall's Service and U.S. Customs all received significant funding to aid in drug control (90). If one includes funding to the court system and prisons as enforcement costs, the 1988 legislation gave approximately 50% of new funding to enforcement and 50% to treatment and education. Unfortunately, this moderate shift in funding had little effect on policy, as only \$500 million of the \$2.5 billion package was actually authorized under the balanced budget requirements of 1989 (Belenko 17).

Despite broad funding goals, the 1988 Anti-Drug Abuse Act continued the "tough" approach to drug control by instituting accountability provisions in an effort to deter users. These provisions eliminated government funds for those convicted of drug offenses, including the loss of public housing, federal grants, contracts and loans. Government contractors were expected to establish a "drug-free work place" and had to certify that their efforts were in good faith (1988 CQ 88). In addition, the 1988 legislation increased civil penalties for the first possession offense (Belenko 16).

The 1988 legislation further utilized the punitive approach to drug control by developing forfeiture procedures beyond the guidelines established in 1984. The Treasury Department was instructed to create a special fund that would be available to the Attorney General. The fund was to be used for expenses related to the seizure, detainment and sale of property confiscated by the Justice Department. Administrative procedures for seizures were also simplified to assure that all property used in drug offenses could be confiscated and sold within a month of the offense (1988 CQ 89).

The 1988 legislation also defined a broad drug-related crime, increased penalties and instituted the death penalty for the most dangerous drug traffickers. Congress defined “endangering human life while illegally manufacturing a controlled substance” as a felony commanding a prison sentence of up to 10 years. The mandatory prison sentence for possession of the cocaine derivative “crack” was increased to five years and life in prison became the mandatory penalty for three-time felony drug offenders (1988 CQ 90). In addition, Congress permitted the death penalty for:

Any person engaging in or working in furtherance of a continuing criminal enterprise or any person engaging in a drug-related felony offense, who intentionally killed or counseled, commanded, or caused the intentional killing of an individual and such killing resulted. The convicted person shall be sentenced to imprisonment of not less than 20 years, to a life term, or to death (91)

Finally, the 1988 legislation created the National Office of Drug Control Policy (ONDCP) as an executive office of the president. The director and deputies were established as presidential appointments requiring the consent of the Senate. The ONDCP was given a mandate to consolidate an annual drug control budget from 18 major departments including: Justice, Defense, Education, Judiciary, Treasury as well as Health and Human Services. This cabinet-level entity was also given the power to prepare a national strategy, including recommendations related to the drug control budget of these departments. This portion of the budget passes through the OMB and is submitted to Congress with the annual budget request of the president (1988 CQ 86).

Results of the Escalated War on Drugs

Under the direction of the ONDCP, the provisions enacted in 1986 and 1988 had an immediate effect on drug use. Between 1985 and 1990, the number of Americans currently using any illegal drug dropped from 23.3 million to 13.5 million, while the number of Americans using cocaine dropped from 5.7 million to 1.7 million (ONDCP 1999). During the same time period, the segment of high school seniors that had used cocaine in the last month fell from 6.7% to only 1.9%, while the segment that had used marijuana fell from 25.7% to 14%. The number of emergency room visits related to cocaine began to level off in 1989 and declined by over 25% by 1990 (SAMHSA, Figure 6). Likewise, the number of deaths from drug-induced causes leveled off in 1989 and began to decline in 1990 (Murphy, Table 20).

While proponents of the “tough” approach to drug control point to the fact that the epidemic of the 1980s was quickly ended and use rates remain well below levels of that period, opponents have argued that this success has been very costly and limited in scope. The costs of the punitive approach are apparent: millions of Americans have been deprived of their liberty at great expense to the state. In 1980 a total of approximately 600,000 drug offenders were arrested by law enforcement officials at all levels; by 2000 the number had risen to 1.6 million (UCR 1996, UCR 2001). At the same time, the number of drug offenders in the federal prison system increased from about 5,000 to about 65,000, while the portion of the total federal prison population sentenced for a drug offense increased from 25 to 57% (BOP 2001). Data from California correctional facilities indicate that these figures were proportionately similar in state prisons (CA DOC 2000).

Despite the best efforts of law enforcement officials, the war on drugs has not been won, as Americans continue to use controlled substances. In 2000, approximately 14 million Americans, representing about 6.5% of the population, reported that they were currently using an illicit drug (ONDCP 2000). While high school students are not widely using cocaine, marijuana use has returned to levels of the late 1980s. At the same time, emergency room visits related to cocaine and total drug-related deaths have once again been on the rise, while the number of total drug episodes has been increasing faster than in the early-1980s (SAMHSA, Figure 4). From this perspective, one must consider the possibility that

the supply reduction model accepted by Americans and written into law in the 1980s is inadequate to solve America's drug problem. If this is the case, then other models must be considered.

Policy Environment Post-2000: Demand Reduction

Kenneth Meier (2001) defines "sin politics," as policies through which the government attempts to increase the cost of a socially undesirable activity with law enforcement. Meier uses an economic model to demonstrate that these policies will inevitably fail, because such a policy does not consider the consequences of the heterogeneity of public demand for the "sin." This concept is illustrated with three generalized categories of consumers:

Nerds have a steep demand curve, one that is highly elastic. Even a modest rise in the cost will cause nerds to forgo sin. Vicarious sinners have a moderate demand curve. Perverts, the key category, have generally flat demand curves; they enjoy sin (or are addicted to it), and thus increases in price will have only minimal effects on their demand for a product (Meier 27)

From this insight, Meier concludes that prohibition backed by law enforcement will enjoy initial success, as "nerds" and "vicarious sinners" are easily deterred by the increased cost. "Perverts," however, are less sensitive to cost and the government will have to spend more to deter this group. At some point deterrence becomes practically impossible, as costs cannot be made high enough to change the consumption level of extreme "perverts" with inelastic demand curves (Meier 31).

Meier's theory has several implications for the success of the supply reduction model of drug control. First, the "tough" approach assumes that users have the ability to stop their illegal activity and punishes them if they choose to break the law. In many cases, the addictive nature of illegal drugs creates a situation where many users are working with a nearly (or completely) inelastic demand curve. Second, the existence of such consumers assures that drug suppliers will continue to provide their product. If price increases that result from law enforcement efforts will not decrease demand as the supply reduction model suggests then there is far less reason for dealers to leave the market. A "demand reduction" approach is more appropriate under this theory, because such policies seek to alter the demand curve of users by treating addiction.

Over the past decade, Americans have come to recognize the failure of the punitive approach established in the 1980s as well as the potential for better results with demand reduction. A 2002 survey indicated that 74% of Americans think that we are losing the drug war. In the same survey, 52% agreed that drug use should be treated like a disease, while only 35% thought that drug use should be treated as a crime^{xvi}. In 2001, 69% of Americans were in support of drug treatment instead of jail time for users on their first or second offense^{xvii} and, in 2002, 89% indicated that users should be given treatment on the first offense^{xviii}. Finally, 2000 survey data indicate that 46% of Americans favored more government spending on treatment for illegal drug use, while only 16% favored less^{xix}.

Role of the Office of National Drug Control Policy

Despite the apparent shortcomings of supply reduction and public support for alternative policies, the U.S. law enforcement apparatus has continued to expand under the legislation passed in the 1980s. Under the direction of the ONDCP, the budget for drug control has soared. Adjusting for inflation, U.S. drug control spending was approximately \$3.1 billion in 1980. Immediately after the legislation of 1988, this figure tripled to \$9.3 billion in the 1989 budget. In 2000, drug control spending had nearly doubled again, as \$18 billion was allocated to ONDCP programs (ONDCP 1999). While Americans have consistently supported increased funding to deal with the drug problem, they have also endorsed demand reduction policies. These policies have not been implemented.

Funding figures indicate that the ONDCP has actually placed a greater emphasis on supply reduction since the conception of the “tough” approach to drug control. In 1991, about 42% of the federal drug control budget was used on domestic law enforcement and 34% of the budget was allocated to demand reduction. The balance of the budget was used on interdiction efforts that relate to international efforts. In 2001, 54% of the budget went to domestic law enforcement and 31% to demand reduction (ONDCP 2001). As one would expect, the number of law enforcement officials has increased as a result. In 1993, federal agencies employed about 68,800 officers with the authority to make arrests. By 2000, this number had risen to 88,500, an increase of more than 25%. The DEA, for example, employed about 4,100 full-time enforcement officers in 2000, compared to only 2,800 in 1993 (BJS 2000). In other words, treatment programs and other demand reduction policies have actually received less attention as the drug control budget has increased. The ONDCP continues to favor supply reduction and the “tough” approach by increasing the number of officers and, logically, the number of arrests.

The most relevant question to current and future drug control policy comes from the apparent discrepancy between policy and public opinion: Did legislation in the 1980s create a narrowly interested bureaucracy that has rendered democratic institutions unresponsive to public sentiment? The ONDCP has recognized the potential for the drug enforcement bureaucracy it oversees to follow its own agenda at the expense of the democratic system. The 2002 National Drug Control Strategy concedes, “Drug fighting institutions have not worked as efficiently as they should,” because, “[bureaucracies] are famously self-protective (ONDCP 2002, 4).” While the report does not elaborate on this point, it is clear that drug enforcement officials are in a position to resist change and have greater motivation to do so than officials in other bureaucracies.

In their well-known models, Niskanen (1971) and Romer and Rosenthal (1979) argue that established bureaucracies have considerable agenda-setting power over the legislature, which can be used to control policy. This is especially true when the status quo differs from the median voter’s preferred policy outcome, as no single alternative is supported by a majority of the legislature (Eavey 721). The bureaucracy is able to present the legislature with a take-it-or-leave-it budgetary choice, severely limiting the options of lawmakers. In this way, bureaucrats are able to utilize their superior knowledge of cost functions to dictate which alternative is adopted; namely, the alternative that maximizes the budget of the bureaucracy (720). Whether the status quo remains, or an alternative that benefits the bureaucracy is adopted, voters’ preferences cannot be established as policy (722).

While these models have been criticized due to their simplification of the legislative process, a more extensive study of congressional-executive “bargaining” also concludes that the legislature may lose its ability to actively engage policy alternatives on certain issues. Based on their study of agenda-setting “games,” Eavey and Miller (1984) argue that information control and limited methods of budgetary proposal give distinct advantages to the bureaucracy. In these situations the legislature is faced with limited options like those described by Niskanen, Romer and Rosenthal (Eavey 729).

In the context of U.S. drug control, these models indicate that ONDCP has the ability to resist policies that are inconsistent with the interests of its well-funded bureaus and provide a reasonable explanation for the lack of policy change. Since 1988, the ONDCP has worked under a mandate to set overall strategy and organize both the supply and demand reduction sides of the war on drugs. The drug control budget for 18 major government departments flows through the ONDCP, with the two largest, Justice and Health and Human Services, symbolizing each dominant approach. This overall strategy, as defined by the ONDCP leadership, dictates the budgetary “need” of each agency. The budget is presented to Congress as a single proposal with funds to be allocated based on the strategy. There is little political leverage for representatives to insist on additional funding for treat-

ment programs when the ONDCP dictates that the national strategy does not require it or that current funding is meeting the “needs” of these programs. With the Office of National Drug Control Policy Reauthorization Acts of 1998 and 2003, Congress authorized the ONDCP and its appropriations until 2008. This legislation was passed with minimal debate over funding or the authority of the ONDCP.

In addition, there is a great deal of evidence that the ONDCP has exercised control over information about its expenditures and manipulated the drug control budget. In 2001, the Rand Corporation investigated drug control spending of 10 agencies and found considerable discrepancies between reported and actual spending. In 1998, the ONDCP reported that U.S. agencies spent \$2.8 billion on drug treatment programs; Rand found that the figure was approximately \$1.8 billion. The report indicated that the data collection methods used by the Substance Abuse and Mental Health Administration, which oversees \$2 billion in state block grants, “is a collection of arbitrary assumptions and rules.” The study also found that the reported costs of law enforcement programs are nothing more than “educated guesses.” Rand concluded that “flawed reporting techniques” made it impossible to assess actual spending on different drug control programs. In response to the report, one Representative lamented the lack of Congressional oversight: “Before we ask for more drug control money, we ought to know where it’s going (Donnelly A1).”

Because the bureaucracy is able to utilize strategic and informational control, it is important to note that drug control officials are faced with disincentives to shift policy away from law enforcement programs. Within the ONDCP, the status quo favors supply reduction over demand reduction, because the largest number of programs have focused on law enforcement since the creation of the cabinet-level department. Law enforcement bureaucrats follow the same self-interested motives as other bureaucrats: increased budgets, discretionary authority and the opportunity to get the job done (Rasmussen 127).

The drug control bureaucracy, however, is also faced with another disincentive that is unfamiliar to most executive officials: the ability and need to self-finance. While Rasmussen and Benson may have overstated the role of the 1984 Comprehensive Crime Act as a causal mechanism to the Anti-Drug Abuse Acts of 1986 and 1988, the development of forfeiture programs throughout the 1980s provides a unique motive for the ONDCP to remain focused on supply reduction efforts. During the formation of the Anti-Drug Abuse Act of 1988, Congress recognized the potential benefit of funding drug control programs through asset forfeiture. In an era of budget crisis created by the Gram-Rudman-Hollings spending limit, Congress passed drug control legislation under the assumption that an additional \$50 million would be injected back into drug control programs through forfeitures (1988 CQ 105).

In practice, self-funding methods by law enforcement agencies have been far more successful than Congress predicted. Between 1993 and 1998 the Department of Justice deposited \$2.7 billion in its forfeiture fund, or about \$450 million annually (Blumenson 12). The largest contributor has been the Drug Enforcement Administration, which, since 1990, has grossed more in total seizures every year than the agency has been allocated in its annual budget (11). While these funds are distributed to many drug control programs as well as the DEA, it would be irrational for the ONDCP to reduce the budget of an agency that essentially pays for itself and helps cover other costs as well. Under the “adoption” program, the situation has been similar at the state and local level. Through the 1990s, state and local officials were able to deposit approximately \$140 million in seized property every year. Based on this success, a 1993 report issued by the Department of Justice claimed that specialized local law enforcement agencies could be funded through forfeitures (12). Observers have questioned not only the incentives that are being created to maintain the status quo, but also the danger of such practices. A 1998 article published in *The Nation*, articulated the primary objection:

Agencies that can finance themselves through asset seizures need not justify their activities through any regular budgetary process. The consequence is an extraordinary degree of police secrecy and freedom from legislative oversight. The prospect of a self-financing law enforcement branch, largely able to set its own agenda and accountable to no one... should not be mistaken for a legitimate organ in a democracy (12)

Considering the disincentives that have been created for policy change, events of 2001 seem to prove that the drug enforcement bureaucracy would remain committed to supply reduction policies. In May 2001, President Bush publicly claimed that, "...the most effective way to reduce the supply of drugs in America is to reduce the demand for drugs in America," and announced a plan to increase funding for drug treatment programs by 8% (Allen par. 6). Unfortunately for demand reduction supporters, the primary purpose of the press conference was to announce the appointment of John Walters as the new director of the ONDCP. Walters was the top deputy to William Bennett, who acted as director of the ONDCP during the previous Bush administration (Worrisome par. 2). Observers claimed that Walters' appointment demonstrated "a clear preference for military and law enforcement strategies (par.1)." In 1997, Walters wrote a book that explored the concept of emerging drug-dealing "superpredators." He had also been quoted having criticizing treatment funding as, "the latest manifestation of the liberals' commitment to a 'therapeutic state' in which government serves as the agent for personal rehabilitation (par. 4)." While supporters of demand reduction had hoped that a change in leadership would allow the ONDCP to adopt the preferred philosophy, under Walters' leadership the ONDCP has failed to do so.

Rather than providing the groundwork for a fundamental shift to demand reduction policies, the 2002 National Drug Control Strategy linked the two theories of drug control as an original approach. The ONDCP argues:

These different elements of our drug control program are really two sides of the same coin... treatment works. But even the best drug treatment program cannot help a drug user who does not seek its assistance (ONDCP 2002, 4)

The document then points out that one-third of all treatment admissions are referred through the criminal justice system (ONDCP 2002, 14). In other words, the extensive law enforcement system that was created to arrest and punish drug offenders must remain in place to help addicts get into treatment. While this role of the law enforcement apparatus should be emphasized as a demand reduction effort, the fact that the ONDCP continues budgeting under a supply reduction philosophy suggests that this is nothing more than a justification to maintain the status quo (ONDCP 29-31).

Conclusion

Over a decade later, it is clear that in both philosophy and practice, the origins of current U.S. drug control policy can be traced to legislation of the 1980s. Under the pressure of strong public opinion in an election year, Congress passed extensive drug control measures in both 1986 and 1988. Within this unique environment, legislation effectively escalated the domestic war on drugs by attacking users and dealers through punitive policies and aggressive law enforcement. These policies produced short-term success by effectively ending the "crisis" that Americans perceived during the late 1980s. Despite apparent long-term failures of the war on drugs and changing public opinion, however, the ONDCP has continued the punitive approach into the 21st Century. The success of U.S. drug control requires that Congress reassesses the role of the ONDCP under a demand reduction philosophy and focus on the attainable goals in the "all out war" on the problem of drug abuse in America.

Endnotes — Survey Questions

ⁱ (Here is a list of things that may affect people's health. For each, I would like you to tell me whether you think it is...a very serious problem in today's society, a somewhat serious problem, a not too serious problem, or a not at all serious problem.)...Drug use. *American Council of Life Insurance*. 24 April 1982, (1252 respondents).

ⁱⁱ Based on what you've seen or heard, do you feel that the use of cocaine has increased in the last few years, decreased, or stayed the same? *Time*. 1 March 1983, (1008 respondents).

ⁱⁱⁱ (There are many problems facing our nation today. But at certain times some things are more important than others, and need more attention from our Federal Government than others. I'd like to know for each of the things on this list whether you think it is something the government should be making a major effort on now, or something the government should making some effort on now, or something not needing any particular government effort now.)...Trying to solve the problems of crime and drugs. *Roper Organization*. 5 June 1980, (2006 respondents).

^{iv} *Roper Organization*. 29 May 1984, (2000 respondents).

^v (Do you think that the federal government should be spending more, less, or is it spending about the right amount on the following items.)...War on Drugs. *Ebony*. 31 July 1984, (1200 respondents, African-American sample).

^{vi} Generally speaking, are you very concerned, somewhat concerned, or not concerned about the problem of illegal drugs in this country? *Washington Post*. 15 June 1988, (1012 respondents).

^{vii} (Many people have different concerns about illegal drugs. I'm going to read to you a few of these concerns, and I want you to tell me whether you are now very concerned, somewhat concerned, or not at all concerned about each.) How concerned are you that...the quality of life in your community will be hurt by illegal drugs. *Washington Post*. 15 June 1988, (1012 respondents).

^{viii} (There is a lot of talk these days about the problem of drug abuse in our country and how best to control it. Here is a list of possible steps that could be taken. Would you please read down that list and for each one tell me whether you think it would be very effective, somewhat effective, not too effective, or not at all effective?)...Having stricter prosecution and punishment of drug sellers. *Roper Organization*. 20 September 1986, (1997 respondents).

^{ix} (Here are some reasons given for the drug problem, and for each one please tell me if you think it is true and an important part of the problem, true but a minor part of the problem, or not true and not part of the problem.) Our legal system has not been tough enough of drug pushers. *Americans Talk Security*. 25 April 1988, (1000 respondents).

^x Do you agree or disagree with this statement: Any use of illegal drugs is unacceptable and should result in criminal prosecution? *Americans Talk Security*. 25 April 1988, (1000 respondents).

^{xi} Do you favor or oppose...tougher penalties for drug possession? *Time*. 25 October 1988, (1475 respondents).

^{xii} (There is a lot of talk these days about the problem of drugs in our country and how best to control it. Here is a list of possible steps that could be taken. Would you please read down the list and for each tell me would you be willing to pay the extra cost of taking that step or don't you think that it would accomplish enough to be worth the extra cost?)...Having stricter prosecution and punishment of drug sellers even though it would be necessary to raise income taxes to get more judges and jails. *Roper Organization*. 20 September 1986, (1997 respondents).

^{xiii} Do you think federal spending on combating illegal drugs should be increased, decreased, or kept about the same? *CBS News/New York Times*. 5 July 1988, (1177 respondents).

xiv (I want to describe a series of actions that might be taken with regard to AIDS and illegal drugs. Every one of these programs is likely to cost billions of dollars and might require increased taxes to support it. For each one, please tell me whether you would be more or less likely to vote for a presidential candidate taking this position.)...A candidate who supports a multi-billion dollar increase in federal funding for additional police, courts, and prisons to combat drug users and dealers. *USA Today*. 4 August 1988, (1283 respondents).

xv (Please tell me whether you agree or disagree with each of the following statements)... We are losing the drug war. *PEW Research Center*. 14 February 2001, (1513 respondents).

xvi All in all, should drug use be treated more like a crime or like a disease? *Pew Research Center*. 14 February 2001, (1513 respondents).

xvii Would you support or oppose a law in your state requiring drug treatment instead of jail time for people convicted of illegal drug abuse on a first or second offense? *ABC News*. 16 May 2001, (1024 respondents).

xviii When a person is convicted for using drugs there can be a choice between sending them to jail or having them go to a drug treatment program instead. What do you think is the best way to deal with a drug user convicted for the first time - jail or treatment? *ABC News*. 27 February 2002, (1025 respondents.)

xix Do you favor government spending more, less, or about the same amount on treatment for illegal drug use? *Harvard School of Public Health*. 7 August 2000, (1012 respondents).

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