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Discriminatory Decision Making at the Legislative Level

An Analysis of the Comprehensive Drug Abuse Prevention and Control Act of 1970

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This paper is an analysis of the Comprehensive Drug Abuse Prevention and Control Act of 1970. Consistent with value-conflict perspectives, previous research on the social origins of drug legislation suggests that coercive laws occur when the behavior of minority and other subordinate groups become threatening. Liberalizing drug legislation is enacted when the interests of dominant groups seem juxtaposed to existing punitive legislation. The present analysis explores the process of legislative decision making when both subordinate *and* superordinate groups engage in drug-related behaviors which run counter to dominant norms and values. To do so, a detailed analysis of the congressional committee hearings and floor debates which preceded enactment of the 1970 Act was conducted. This analysis revealed that Congress did not pass a strictly coercive drug control policy at the risk of stigmatizing superordinate groups. Nor did it choose to liberalize drug penalties across the board. Congress perceived that strictly liberal policies might undermine both the instrumental goal of reducing illicit drug activity, and the symbolic goal of expressing general societal disapproval of illicit drug use. Instead, the legislation that emerged from congressional debates contained both liberal and coercive provisions reflecting the requirements of dealing with two targeted populations: young middle and upper class white drug users who became identified as victims of drug traffickers; and large-scale and professional drug dealers who became identified as enemy deviants—the true source and symbol of the drug problem. Liberal, and essentially discriminatory, provisions permitted the protection of the former from stigmatization as criminal felons. Coercive, but apparently nondiscriminatory, provisions provided the threat and potential for severe punishment of the latter. The discriminatory features of the 1970 Act are identified and explicated. And, the implications of the Act's provisions for race- or class-based decisions in the application of sanctions are discussed.

INTRODUCTION

An important tenet of American criminal justice is the assumption of equality

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before the law. Ideally then, both lawmaking and law enforcement are class- and color-blind. Laws are based on general and universalistic criteria, and are applied without regard to the social background of those subject to its effects. Legal scholars have long attempted to assess the degree to which justice is exercised in a manner consistent with these legal ideals. The most prominent body of research along these lines considers the role of race, class, and other status characteristics of offenders on arrest, prosecutorial, and judicial decisions. However, scholars also recognize that discriminatory lawmaking represents another way in which the reality of the administration of American justice may depart from our ideals of equality before the law. Legislators may criminalize or assign penalties to behaviors that are common only to certain segments of the population (e.g., the lower classes or minorities), fail to criminalize or assign only slight penalties to harmful behaviors that are common among preferred segments of the population, or allocate resources such that certain groups are more likely than others to be the targets of law enforcement activities (Kleck, 1981). Legislation containing such features is discriminatory not only in its construction, but may also have discriminatory consequences at the level of law enforcement. As Kleck (1981, p. 801) suggests, discriminatory decisions at the legislative level may "reveal far more about why blacks and lower-class persons are overrepresented in arrest, court, and prison data than studies of processing within the criminal justice system."

Although discrimination is not always an explicit concern, there is a fairly substantial body of literature which examines the social origins of criminal legislation. Most such studies are posed as tests of the relative merits of value-consensus versus conflict models of law. In brief, although there are several variants of consensus theory (e.g., Durkheim, 1964; Freidmann, 1959; Bohannon, 1965), the basic argument is that criminal laws grow out of the societal mores, and are expressions of "those societal values which transcend the immediate interests of individuals or groups" (Chambliss, 1969, p. 8). Criminal law, therefore, represents the codification of values and customs that are widely shared in society and that reflect common interests.

In contrast, conflict viewpoints hold that criminal laws are expressions of the interests of the more powerful segments of society. Some conflict theorists draw largely upon the works of Marx and regard criminal laws as expressions of ruling class interests. Thus, for example, Quinney (1975, p. 291) argues that "Criminal law is an instrument that the state and dominant ruling class use to maintain and perpetuate the existing social and economic order." This theme is also echoed in the works of Chambliss (1973, 1974), and Taylor et al. (1973, 1975). A more moderate conflict perspective (Quinney, 1970; Chambliss and Seidman, 1971) views laws as reflecting and symbolizing the victory of one interest group over that of others, but no single set of interests is assumed to underlie all criminal legislation.

Research on the enactment of theft (Hall, 1952), vagrancy (Chambliss, 1964), sexual psychopath (Sutherland, 1950), prostitution (Roby, 1969, 1972), alcohol (Sinclair, 1962; Gusfield, 1963), and drug laws (Becker, 1963; Musto, 1973; Bonnie & Whitebread, 1974) suggests that conflicts of interest rather than consensus of

values are the prime factors underlying much contemporary lawmaking. (In many instances too, the interests involved are race and class based.) Importantly, most of the research upon which this conclusion is based has a common feature; the legislation under consideration usually involves a single and fairly uniform type of behavior that is engaged in characteristically by an identifiable but subordinate segment of the population (Galliher & Pepinsky, 1978). Such a bias in the choice of legislation may have permitted only a limited understanding of the role of conflict in legislative decision making. If neither the interests nor the values of dominant populations are being called into question, it is not surprising that the laws which emerge reflect and symbolize their interests at the expense of less powerful and less reputable populations. Importantly too, we are unable to specify on the basis of such research the kinds of circumstances that will give rise to one or the other forms of discriminatory legislation (e.g., legislation favoring the privileged or aimed at controlling subordinates).

A more complete understanding of the role of conflicts of interests and values in lawmaking requires examination of proposed changes that could affect dominant as well as subordinate interests (Hagan, 1980; Hopkins, 1975). What happens, for example, when both subordinate and superordinate groups are believed to engage in behavior which runs counter to dominant values and norms? Are solutions sought which preserve intact dominant values regardless of the groups affected? Or, do lawmakers attempt to differentiate the various populations and their behavior? If the latter, how are such distinctions made, justified, and presented in the form of a general law?

The purpose of this paper is to address the above and related questions by examining passage of the Comprehensive Drug Abuse Prevention and Control Act (CDAPCA) of 1970. This act presents a unique opportunity to investigate the above questions because it deals with behaviors that (1) are complex and varied, (2) involve both subordinate and superordinate population segments, and (3) potentially place into conflict dominant values and dominant interests. In analyzing the 1970 Act particular attention will be given to any discriminatory features in the construction of the legislation, and to the potential of the legislation for permitting discrimination at the law enforcement level. Before turning to our analysis of the 1970 legislation, a brief review of the previous literature on federal drug control may help to put the present legislation in the appropriate historical perspective.

PREVIOUS LITERATURE ON FEDERAL DRUG CONTROL

Research on the enactment of federal drug laws supports the view that such laws reflect discriminatory decision making (along race and class lines) at the legislative level. Consistent with conflict viewpoints, most explanations of federal drug control have viewed the laws as instruments of social conflict stemming from profound tensions among socioeconomic, ethnic, and racial groups. When such tensions are high, and use of a particular drug is associated with an identi-

fiable and threatening group, legislation is enacted to control the undesirable behavior, and/or as a symbolic expression of hostile attitudes toward the particular group.

Musto (1973) and others (Reasons & Purdue, 1981; Helmer, 1975) demonstrate how the Harrison Narcotic Act of 1914 was linked to fear of opium smoking among the Chinese during a period when Chinese workers represented a labor surplus and an economic threat to working class Americans. This perceived threat resulted in antagonism against the Chinese, and, "along with this prejudice came a fear of opium smoking as one of the ways in which the Chinese were supposed to undermine American society" (Musto, 1973, p. 6). Musto adds that passage of the Harrison Act was also associated with fear of cocaine use by blacks in southern states. Because of the euphoric and stimulating properties of this drug, "The South feared that Negro cocaine users might become oblivious of their prescribed bounds and attack white society" (Musto, 1973, p. 6).

Similarly, researchers (Musto, 1973; Bonnie & Whitebread, 1974) have documented an association between the passage of the Marihuana Tax Act of 1937 and the threats posed by marihuana-smoking Mexican immigrants under conditions of economic depression in the 1920s and early 1930s. Mexican immigrants had been welcomed as a source of cheap farm labor during the economic boom in the early 1920s. With the onset of the Great Depression the Chicano and Mexican labor force became an unwelcome surplus in regions devastated by unemployment. Under these circumstances, the use of marihuana became a symbol of evil and users were depicted as capable of the most violent crimes under its influence (Reasons & Purdue, 1981). In short, the prohibition of opium and cocaine use under the Harrison Narcotic Act, and marihuana use under the Marihuana Tax Act was aimed at controlling the perceived threats posed by the noted ethnic and racial populations. In addition, the respective laws were symbolic gestures to indicate the superiority of Anglo culture over Oriental, black, and Chicano culture in times of great concern about these threatening groups.

Social research on federal drug legislation since the Marihuana Tax Act is not as extensive or as systematic. However, available literature continues to emphasize economic or social tensions between different segments of society. For example, Susman (1975), the National Parole Institutes (1964), and Glaser (1974) note that following World War II, drug use became concentrated in large cities, among younger persons, persons from the lowest socioeconomic classes, and particularly, among poor slum-dwelling blacks, Puerto Ricans, and Mexican-Americans. Further, among these "outsiders," drug addiction increasingly became associated with other types of illegal behavior (crime and delinquency). In this context Congress enacted the most severe criminal sentences ever imposed for drug use and abuse (see the pre-1970 penalty structure summarized in Table 1).

While the research cited above is clearly suggestive of racial and ethnic discrimination in the making of criminal drug laws, it is noteworthy that under certain circumstances even the drug-related behavior of affluent socioeconomic groups (e.g., middle class whites) may be subject to punitive legislation. Federal drug legislation enacted during the 1960s (The Federal Drug Abuse Control

Table 1. Pre-1970 Federal Drug Penalties

Penalties for narcotic drugs and marijuana under the Narcotics Control Act of 1956
(Effective dates 1956–May 1971)

Offense	Jail term		Maximum fine	Probation & suspended sentences permitted	Parole permitted
	minimum	maximum			
Possession					
1st offense	2 yrs	10 yrs	$20,000	Yes	Yes
2nd offense	5 yrs	20 yrs	$20,000	No	No
3rd plus	10 yrs	40 yrs	$20,000	No	No
Sale					
1st offense	5 yrs	20 yrs	$20,000	No	No
2nd plus	10 yrs	40 yrs	$20,000	No	No
Sale of marijuana to minors	10 yrs	40 yrs	$20,000	No	Yes
Sale of heroin to minors	10 yrs	Life (death possible)	$20,000	No	No

Penalties for dangerous drugs under the Federal Drug Abuse Control Amendments of 1965
(Effective dates February 1966–October 1968)

Offense	Jail term		Maximum fine	Probation & suspended sentences permitted	Parole permitted
	minimum	maximum			
Trafficking					
1st offense		1 yr	$ 1,000	Yes	Yes
2nd plus		3 yrs	$10,000	Yes	Yes
Sale to minors					
1st offense		2 yrs	$ 5,000	Yes	Yes
2nd plus		6 yrs	$15,000	Yes	Yes

Penalties for dangerous drugs under the Federal Drug Abuse Control Amendments of 1968
(Effective dates October 1968–May 1971)

Offense	Jail term		Maximum fine	Probation & suspended sentences permitted	Parole permitted
	minimum	maximum			
Possession					
1st offense		1 yr	$ 1,000	Yes	Yes
2nd plus		3 yrs	$10,000	Yes	Yes
Trafficking					
1st offense		5 yrs	$10,000	Yes	Yes
2nd plus			$20,000	Yes	Yes
Sale to minors					
1st offense		10 yrs	$15,000	Yes	Yes
2nd plus		15 yrs	$20,000	Yes	Yes

Amendments of 1965 and 1968) are cases in point. The most distinctive feature of drug use during this period was the consumption of new types of drugs (including LSD and other hallucinogens) by middle class youth in communities and on college campuses. Although the use of dangerous drugs was not concentrated among traditional "social inferiors," Greenberg (1974, p. 190) argues that "the rationale behind the legislation [of the 1960s] was not the control of drug abuse, but the deliberate harassment and supression of an emerging minority group felt to be politically dangerous and morally disruptive." Gusfield (1975) adds that drug use among youth in the 1960s was related to major cultural issues, especially the "moral revolution," which touched off new debates about hedonism, sexuality, individual and public responsibility, and personal ambition. Thus, for Gusfield, the labeling of the new drugs of the 1960s as illicit served to maintain the condemnation of drug users and reinforced the legitimacy of those values threatened by cultural change.

In sum, legal prohibition of drugs or an upgrading of drug penalties is likely to occur when groups (most often minority and low-income groups) threaten powerful interests or challenge dominant cultural values. In Gusfield's (1963) terms, the threats posed are those of "enemy deviants." Importantly, Greenberg's (1974) and Gusfield's (1975) analyses indicate that the drug-related behavior of dominant segments of the population may be subject to punitive legislation if that behavior symbolizes a challenge to the legitimacy of important social values. It is also noteworthy, however, that the penalties enacted in the latter types of cases are likely to be much less severe than those which apply to crimes involving substances (e.g., heroin, cocaine) presumably used by traditional minorities. For example, compare the pre-1970 narcotics and marihuana penalties with the pre-1970 penalties for dangerous drugs in Table 1. It is even possible that a decline in prohibition will occur when the undesirable activity is associated with important segments of society. Although drug penalties are seldom lowered, analyses (Galliher et al., 1974; Galliher & Basilick, 1979; Glaser, 1974) of liberalizing trends in marihuana legislation at the state level emphasize a feature that is more or less a "corollary of the conflict perspective's claim regarding the use of drug laws for minority oppression. The conclusion is that consensus on lenient penalties is most easily achieved if the drug in question is not associated with a threatening minority" (Galliher & Basilick, 1979, p. 295).

Considering the population groups separately, then, it is possible to interpret legal changes which emerge to control the drug-related behavior of both subordinate and superordinate groups within the conflict frame of reference, and as reflecting discriminatory lawmaking. In the case of subordinate groups, the legislation which emerges attempts to protect dominant values and powerful interests by applying coercive reform when the behavior of minority and low-income groups become threatening. On the other hand, drug control laws tend to be liberalized when the interests of dominant groups seem juxtaposed to more punitive existing legislation. A variant on the latter theme is to criminalize the undesirable conduct, but to impose relatively light penalties mainly as a way of reaffirming the legitimacy of values threatened by the drug-related activities of reputable populations.

The questions that provide the impetus for the present analysis remains, however. What happens when a perceived drug crisis simultaneously involves the behavior of both subordinate and superordinate groups? How does a legal system, which is supposed to be blind to race and class considerations in law-making and enforcement, deal with the conflicting interests posed by a diverse population of drug offenders? Does Congress differentially weight the threats posed by each group and construct a law that applies to all, but which is more or less coercive or liberal depending upon the relative seriousness of the threats posed? Or, does the legislature attempt to tailor the law to meet the requirements of "substantive justice" for the various populations? If the latter, what is the system's mechanism for differentiating among populations, and justifying the resulting law in universalistic terms? Discovering the answers to these questions is the subject of the following discussion.

METHODOLOGY

To explore the (1) possible discriminatory features of the 1970 federal drug act and (2) the process through which a general law is developed to accommodate a variety of specific concerns, a detailed analysis of the congressional committee hearings and floor debates which preceded the law's enactment was conducted. In total, Senate and House hearings yielded approximately 2000 pages of testimony from more than 118 witnesses representing the Administration, local and state law enforcement (e.g., mayors, police commissioners, etc.), various medical and scientific fields (e.g., pharmacists, physicians, drug manufacturers, psychiatrists), agencies administering to people with drug problems, and a smattering of educators, civil libertarians, and the like. In addition to committee hearings, there were eight days (six in the Senate, two in the House) of floor debates on various versions of the proposed drug legislation.

The congressional records from these debates and hearings were examined in detail to discover Congress' views of its mission in light of the variety of population groups likely to be affected by the legislation; Congress' justification of provisions, if any, that distinguish among offenders on the basis of social criteria, such as race, ethnicity and class; and any hidden agendas, symbolic or instrumental, of the lawmakers. Obviously, there are shortcomings in relying solely upon an examination of congressional records in analyzing legal changes. As Galliher and Basilick (1979, p. 286) note, "complete understanding of any legislation, including drug laws, requires consideration of both triggering events and historical foundations." Such factors may be revealed in a variety of sources, including news reports and interviews with key informants. Thus, for a comprehensive understanding of changes in legislation, it would be desirable to provide a very broad data base. However, when the "political drama" of debates and hearings is complex and detailed (as it is in this case) they may provide sufficient evidence of structural conflicts that underlie the legislation. In addition, in analyzing the process of lawmaking, it is inappropriate simply to take the legislation

at face value. The statutes may not reflect congressional (or public) intent regarding the punishment of offenses or offenders. However, hidden agends, symbolic and instrumental, may be revealed in the process of hammering out specific provisions of the legislation. Thus, systematic analysis of congressional debate should provide a useful way of discovering (1) what types of offenders (offenses) are actual and symbolic targets of the legislation and (2) how Congress distinguished (and justified such distinctions) among offenders from different social backgrounds in constructing a law that is general in content, tone, and message. More generally, the present analysis provides a case study of the dynamics of the criminal lawmaking process as it occurs in the legislature. Unfortunately, as Gibbons (1982) points out, such detailed study is an important omission in analyses of the creation of law in modern societies.

BACKGROUND OF THE 1970 ACT

Like previous drug legislation, the CDAPCA was a response to a perceived drug crisis. During the late 1960s and early 1970s, public and political concern about drugs reached near crisis proportions (Lidz and Walker, 1980). Several factors seemed to characterize the period. First, as noted above, by the end of the 1960s, new patterns of drug use, abuse, and trafficking were evident among middle and upper class white youth. In part, such drug use stood as a symbol of youth's disaffection with the legal system, Vietnam War policies, and general societal values (Lidz and Walker, 1980; Gusfield, 1975; Greenberg, 1974). Second, there was a presumed increase in opiate use among traditional drug-using populations (i.e., minorities and members of the lower classes). Third, concommitant with the rising and/or presumed increase in drug use was an increase in street crime which increasingly became associated with drug use. The presumption was that addicts committed crimes of theft to support their drug habits, and committed acts of violence while under the influence of drugs. In addition to these drug-using populations, of course, were the suppliers of drugs—manufacturers, distributors, and major and small dealers who sold drugs for profit. Although drug trafficking is racially and ethnically stratified, (Ianni, 1974), traffickers cut across a variety of race, ethnic, and class lines.

In short, unlike in previous legislation, dealing with the drug problem in 1970 meant (1) dealing with a variety of kinds of offenses and offenders and (2) addressing the symbolic challenge to the legitimacy of existing norms and values posed by drug using and pushing among reputable population groups, and the perceived threats to life and property posed by traditional drug using populations. We turn now to our analysis of the process through which the legislature accommodated within a general law the illicit drug behavior and related activites of diverse population segments, while preserving at least in appearance, the ideals of equality and justice, and symbolizing societal disapproval of undesirable drug use.

PROVISIONS OF THE 1970 ACT

The 1970 Act made broad sweeping changes in the structure of federal drug control. The new law consolidated nearly all existing federal drug legislation, and changed the basis of federal drug control from Congress' powers to tax and to control imports to the power of Congress to regulate interstate commerce. In addition, and most importantly for our purposes, the 1970 Act established a new and more complex penalty structure for federal drug offenses (see Table 2) which tied the penalties both to the type of crime (e.g., sale or possession) and the type of substance involved.[1]

Major impetus for new drug legislation came from the White House.[2] Echoing the characteristics of the drug problem described above, on July 14, 1969 President Nixon sent a message to Congress in which he argued that the abuse of drugs had "grown from essentially a local police problem into a national threat to the personal health and safety of millions of Americans" (Congressional Quarterly, 1969, p. 57-A). To cope with this growing menace the President outlined a ten-point program, including proposals for a complete revision of current inadequate and outdated drug laws.

With several exceptions, the Administration's bill as submitted to Congress maintained the same penalties that were in effect under the Narcotics Control Act of 1956 and the Drug Abuse Control Admendments of 1968. As outlined in Title V of S.2637, the original bill would have altered earlier penalties by (1) eliminating minimum mandatory sentences for first-offense possession cases only; (2) providing for special first-offender treatment in unlawful possession cases; (3) requiring that in the application of special penalties for sale to minors, the recipient must be at least three years the junior of the distributor; (4) treating possession with intent to sell in the same manner as sale; (5) separating and extending penalty provisions for the professional criminal engaged in the business of supplying drugs to others for profit; and (6) providing civil penalties for industries which violate certain laws. Significantly, mandatory minimum penalties for offenses other than first-offense possession were retained, as were the specific penalty ranges for most offenses.

Importantly, the penalty provisions that were eventually enacted into law were substantially less severe than those originally proposed by the Administration and those effective prior to the 1970 Act. Especially noteworthy were (1) the wholesale elimination of mandatory minimum penalties; (2) the reduction of maximum sentences for traditional drug offenses; (3) the reduction of first-offense possession, and distribution of small amounts of marihuana for no remuneration, to misdemeanors; (4) the provision of special first-offender treatment for possessors; and (5) the elimination of provisions denying offenders the right to probation and parole or to have their sentences suspended. In only two areas were the 1970 penalty provisions more severe than earlier federal drug penalties. Under the 1970 Act, two new categories of offenders were singled out for especially harsh treatment—those engaged in a continuing criminal enterprise,[3] and the dangerous special drug offender.[4] Even with these tough provisions, however, the bulk of

defendants were likely to be processed under statutes that permitted lower penalties than they may have received under earlier laws. (See Table 2 for a summary of penalties under the 1970 Act.)

EXPLAINING THE 1970 PENALTY REDUCTIONS

Analysis of congressional debates surrounding the enactment of the 1970 Act suggests that the noted penalty structure did in part represent discriminatory lawmaking (i.e., the construction of penalties that would minimize any possible negative consequences that might accrue from the criminal drug activities of a preferred segment of the population—white middle class youth). It would be a misrepresentation, however, to conclude that serving the interests of the middle and upper classes by protecting their sons and daughters from criminalization as felons was Congress' only goal in enacting the provisions of the 1970 Act. Congress also sought to (1) underscore societal disapproval of illicit drug use—whether that characteristic of subordinate or superordinate populations and (2) provide a coercive approach to drug control in dealing with certain conventional types of offenders. Thus Congress distinguished among drug offenders in such a way that permitted the simultaneous achievement of all of these goals. Refocusing the drug problem on the consequences of pushing drugs rather than on their use was the major mechanism by which the distinctions were made and justified. By redefining the problem in this way, Congress was able to develop a law directed at "saving" users and punishing pushers, whatever their respective social backgrounds. Once constructed, such a law would not appear to represent a class-based drug policy, but would provide the vehicle for dealing less harshly with more affluent offenders, the bulk of whom could be conceived as users rather than pushers. (Congress recognized that middle class youth often sold drugs, but profit making was not seen as the major goal of such activity.) Concepts suggested in Gusfield's analyses (1963, 1967) of alcohol prohibition are instructive here.

In discussing the role of the Temperance Movement in the prohibition of alcohol, Gusfield (1963) discerned two types of reform efforts. Assimilative reform is possible when the object of the reform is someone that can be pitied or helped. The sick or repentant deviant is viewed as continuing to hold allegiance to dominant social norms and values. However, because of moral weakness or personal circumstances the individual has slipped into the depths of evilness. The task is to convert and salvage the deviant through benevolent goodwill and humanitarian efforts (to treat or rehabilitate him/her). It is therefore not necessary to apply extreme sanctions to such deviants.

In contrast, coercive reform emerges when the object of the reformer's efforts cannot be pitied or helped; when he or she is an enemy deviant. Enemy deviants reject the reformer's values and do not want to change. They engage in the undesirable behavior for personal pleasure and in defiance of dominant social norms and values. Coercive reformers turn to repressive control mechanisms to deal with the enemy deviant and to reaffirm the dominance of their way of life.

Table 2. Post-1970 Penalty Structure for all Controlled Substances under the Comprehensive Drug Abuse Prevention and Control Act of 1970 (Effective dates May 1971–Present)

Offense	Jail term		Max. fine	Min. spec. parole term	Probation, suspended sentences, parole permitted
	Min.	Max.			
Possession (and distribution of marijuana for no remuneration)					
1st offense		1 yr	$ 5,000	None	Yes (+ record expunging)
2nd plus		2 yrs	$ 10,000	None	Yes
Trafficking in Schedule I and II narcotic drugs					
1st offense		15 yrs	$ 25,000	3 yrs	Yes
2nd plus		30 yrs	$ 50,000	6 yrs	Yes
Trafficking in Schedule I and II nonnarcotic drugs and Schedule III drugs					
1st offense		5 yrs	$ 15,000	2 yrs	Yes
2nd plus		10 yrs	$ 30,000	4 yrs	Yes
Trafficking in schedule IV drugs					
1st offense		3 yrs	$ 10,000	1 yr	Yes
2nd plus		6 yrs	$ 20,000	2 yrs	Yes
Trafficking in Schedule V drugs					
1st offense		1 yr	$ 5,000	None	Yes
2nd plus		2 yrs	$ 10,000	None	Yes
Continuing criminal enterprise					
1st offense	10 yrs	life	$100,000		No (except parole)
2nd plus	10 yrs	life	$200,000		No (except parole)
Distribution to minors					
1st offense: The penalty should be up to twice that authorized for trafficking in the particular controlled substance.					
2nd offense: The penalty should be up to three times that for trafficking in the substance.					
Dangerous special drug offender					
Minimum: The penalty should be not less than the mandatory minimum provided by law for the offense.					
Maximum: Up to 25 years imprisonment except for those offenses with larger maximums.					

Recall that in previous periods, the targets of federal drug legislation were users perceived as enemy deviants in the sense that Gusfield describes. Recall too, that such users were presumed to be primarily from minority backgrounds.

In the politics of deviance defining surrounding the enactment of the 1970 legislation, a new type of enemy deviant emerged, and users of drugs were redefined as sick or misguided. That is, although (1) middle class youth were largely responsible for the increase in drug use during the period and (2) addicts were seen as responsible for drug-related property and violent crimes, pushers emerged as the designated source and symbol of the drug problem in congressional debate. Congress portrayed pushers, particularly large-scale suppliers and dealers, as evil forces corrupting otherwise innocent youth, and as ultimately responsible for the drug-related criminal activities of addicts who are motivated to steal by the high cost of drugs, and who commit acts of violence while under the influence. (The previous attitude was that users created the market for illicit drugs.) In a sense, major drug dealers became scapegoats for the entire drug problem, bearing the brunt of concern over changes in the distribution of drug use, and the threats to legitimacy symbolized in youthful drug use and other protest activity. For their part, youthful middle class drug offenders could be perceived as innocent victims in need of protection from criminal stigmatization rather than punishment.

Addicts were regarded as sick and their treatment emphasized. However, in our assessment, addicts continued to be viewed as belonging to low income or minority population segments, and their designation as "sick" (rather than as enemies) was coincident to the necessity of defining users (whatever their backgrounds) as less culpable in order to protect youthful offenders from severe treatment in the criminal justice system. Indeed, references to addicts in congressional discussion suggest that the class and ethnic biases that prevailed in earlier conceptions of the drug problem were still prevalent in 1969 and 1970. Apparently though, in the absence of economic competition from such groups, and, in the face of perhaps an even greater peril (the subjection of middle class white youth to severe criminal penalties), the drug use and related activities of subordinate populations did not become the central focus of drug control. Indeed, such groups could essentially be ignored, and the lawmaking process focused on two alternative categories of offenders: middle and upper class youth and major drug dealers whatever their social backgrounds.

PROTECTING THE "CREAM OF AMERICAN YOUTH"

The most notable feature of congressional discussion over the 1970 Act was the great emphasis placed upon dealing with the rising tide of drug use among middle and upper class youth. The following statements of the problem by Representatives Dwyer of New Jersey and Sisks of California were typical. (These statements also reflect the still prevalent race and class biases in conceptions of the drug problem.) First, Congresswoman Dwyer:

> There is no longer an easy victim or an obvious seller to whom we can shake an accusing

> finger. On the contrary, the patterns of use and "pushing" are changing rapidly. In the past, most heroin was used by male, urban ghetto dwellers. Now many young, suburban men and women are using this drug.
>
> In years past, marihuana was considered prevalent only among populations of disadvantaged individuals—such as the Mexican American community—and among jazz musicians and the like. Now marihuana smokers penetrate the middle and upper income families as well (United States Congress—1970f, p. 33306).

And, Representative Sisks:

> The insidious menace of drug abuse is growing at an alarming rate across our Nation. It knows no particular geographic boundary nor does it prey on any one particular socioeconomic group. While the uninformed may equate drug abuse with the ghetto and minorities, studies show that it is a problem that has touched the sons and daughters of some Members of Congress as well as other leading members of the business, industrial, and political community of these United States (United States Congress, 1970).

Congress adopted the stance taken by President Nixon that, stopping this epidemic of drug use among the "cream of American youth" was of the highest priority. However, it was frequently noted that the then present cure was in many ways worse than the disease. Members of Congress believed, and cited newspaper reports and arrest statistics as evidence, that one consequence of youthful drug use was the turning of the tools of law enforcement (traditionally used to keep "social inferiors" in line) upon the children of the dominant middle class. Such punishment was not regarded as appropriate for this class of drug offenders. Referring to the innocence of drug-using upper status youth, Senator Dodd of Connecticut summarized the views of the majority of his colleagues:

> What concerns me the most is that thousands of these people arrested for one drug offense or another are not hardened criminals leading lives of lawbreaking and violence. They are not even the hardened drug addicts that used to be the main problem in the slums and ghettos of our larger cities. They are college students, often children of parents who suffer from no lack of opportunity in the economic and educational sense. Quite often they are young people on the road to professional careers as lawyers and teachers. Indeed, today, there are even cases of young school teachers, college professors and ministers being arrested on drug charges.
>
> . . .
>
> Our reaction has often been to do little more than increase the penalties for drug violations. We make new criminals out of a large number of people whose only lawbreaking has been in connection with drug use in response to some personality inadequacy or weakness or disenchantment with the way of life that exists in America today.
>
> . . .
>
> I think we must be most cautious in processing this new legion of drug and narcotic offenders through our present criminal justice system.
>
> We must be careful that we do not send too many to our so-called "correctional institutions" where it is now obvious they will get worse rather than better (United States Senate, 1969, pp. 2–4).

This theme was echoed repeatedly throughout committee hearings and floor debates in both houses of Congress.

Education and research aimed at prevention of drug abuse, and rehabilitation for those who had fallen prey to their own illness, weakness, or gullibility, were

the agreed-upon long-run answers to the drug problem. However, something had to be done immediately before even more of the, otherwise innocent, "cream of American youth have their futures and careers ruined because of an arrest for marihuana. . . " (United States Congress, 1970b, p. 993).

To solve the problem, some legislators called for decriminalization or legalization of those drug offenses most often committed by middle class youth; primarily, possession of marihuana. For a variety of reasons, the majority of Congress found this solution unacceptable. Chief among the reasons was a concern for preservation of the expressive functions of the law as a statement of proper values. It was argued that having some penalty, however lenient, would be a signal to young people that the controlled drugs are dangerous and that society does not approve of their use. On the other hand, in the words of Administration spokesperson Ingersoll, legalization of marihuana, or further reduction in the marihuana penalties, "would place the government in a position of implicit toleration of the abuse of the drug which we do not want to do" (United States House of Representatives, 1970b, p. 114).

Congress also went to some lengths to emphasize the instrumental value of maintaining a possession offense. Referring to the testimony of witnesses from law enforcement, legislators argued that eliminating the possession offense would seriously handicap law enforcers in apprehending and arresting (1) addicts who were otherwise criminals (those who support their habit through theft or perpetrate violence upon law abiding citizens) and (2) professional traffickers—those most culpable of drug law violators. Captain Mueller of the Chicago Police Department stated the case regarding the addict criminal:

> Many of these addicts that are arrested for possession are criminals; they are a menace to themselves and to society, and we are fortunate to get them before the court with the possession charge, and not implying that that is all they are guilty of. To support their habit they may be doing other things: I do believe that addicts are sick people, and as a result of their illness they become criminals, and anything that can be done to reduce the number of criminals we would greatly appreciate [United States Senate, 1969, p. 484].

The argument for retaining the possession offense in enforcing the law against traffickers was twofold. First, it was noted that the relative ease of proving possession as compared to more serious drug offenses, sometimes renders possession the only basis of incarcerating traffickers and big time users. Second, it was argued that the possession penalty could be used as vehicle in building cases against major traffickers. By holding out the threat of imprisonment for possession, prosecutors and police can extract information from individuals and turn them into useful informants that provide a convenient first rung up the ladder to big dealers. (See Sonnenreich et al., 1973 for an elaboration of this idea.)

Although Congress was not amenable to decriminalizing possession offenses (even for marihuana), there was virtually no opposition to lowering penalties for such crimes. One of the stated advantages of this approach was the protection of youth from the throes of the criminal justice system. Youthful offenders were perceived as those most likely to be hurt by stiff possession penalties.[5] By reducing such penalties and providing special first-offender treatment (which, upon

expungement of records essentially negates the conviction), the negative effects upon this class of offenders would be minimized. At the same time, the expressive and law enforcement advantages of having a possession offense would be preserved.

Reduction of possession penalties was also viewed as one way of dealing with the rebellion and alienation of youth. Congress was aware that in the eyes of American youth the entire legal system suffered a very serious credibility gap, owing to (1) youth's recognition that drug laws, particularly possession laws, are either unenforceable or only selectively enforced; (2) the perceived hypocrisy of adult authority systems that penalize illegal use of some mood-altering substances (e.g., drugs) and not others (e.g., alcohol); and (3) the perception of drug laws, especially those related to marihuana, as inherently unjust. Representative Koch of New York summarized the implications for law enforcement:

> To be operative the law requires an implicit trust of its validity by the people—and when this trust breaks down, so does the law. And no amount of penalty can hold up a law that is unjust or deemed to be unjust by the population. Basically, this is what has happened in the pot revolution on our campuses. The students have experimented with pot and their experience has not corresponded with the description used by those who enacted the severe penalty in the law. So, the force of the penalties as a deterrent has crumbled, the use of marihuana has soared, and the law is clearly no longer effective in providing what restrictions over the use of marihuana may in fact be needed [United States Senate, 1969, p. 563].

Members of Congress and Administration spokespersons argued that the new penalty structure (with its lower possession penalties) would increase the credibility, and thereby, the enforceability of the law.

In a more general sense too, the reduction of penalties for possession may have been symbolic: intended as a concession to youth, and others, disaffected with the Vietnam War, law enforcement, "the Establishment," those over 30, traditional values, and other features of American life. As Rosenthal (1977, p. 69) notes, "reducing the penalties for possession of drugs and transfers of small gifts was perhaps the simplest way to make concessions to the dissatisfied; it was certainly simpler, for example, than ending the War."

In short, in its own eyes, with one provision Congress was able to (1) minimize the danger of involving the "cream of American youth" in the criminal justice system; (2) symbolize the disdain of Americans for illegitimate and nonmedical use of drugs; (3) remove or reduce one possible source of alienation of American youth; and (4) provide a handhold against the criminal addict, and pushers who are difficult to arrest because of their insulation from street traffic. Further, these goals had been achieved largely without dissension or division of opinion among the ranks of Congress, and with the approval of civil libertarians and representatives from the fields of law enforcement, medicine, and various scientific communities.

Since protecting and appeasing middle and upper class youth seemed to be the prime objective of legislators in reducing possession penalties, and since Congress believed marihuana to be the main drug of abuse among these youth, a question arises regarding why harsher penalties were not imposed for possession

of drugs regarded as more dangerous (e.g., heroin). Although there was substantial disagreement on the relative and absolute harmfulness of marihuana compared to other drugs, Congress did distinguish between marihuana and other substances in deciding to treat the distribution of small amounts of marihuana (but not other substances) for no remuneration as a misdemeanor. Further, since opiate drugs and cocaine were presumed to be used primarily by drug offenders from subordinate populations, stiffer penalties for possession of these drugs would not have placed middle class youth at any additional risk of criminalization. Still Congress chose not to rely upon the distinction between marihuana and other types of drugs in setting penalties for possession offenses. There are a number of possible explanations.

First, Congress may have anticipated that youthful offenders might occasionally use more dangerous substances than marihuana. Thus, they could be faced with the greater penalties if the law was administered evenhandedly. Second, prescribing the same penalty for possession of any controlled substance may simply have reflected the symbolic nature of the possession offense. Since Congress intended that federal law enforcement efforts be concentrated on illegal suppliers rather than possessors, the level of the possession penalty, whatever the substance, was not very important, so long as it was high enough to indicate disapproval of nonmedical use of drugs.

A third possibility is that by keeping penalties very light for possession of dangerous drugs (e.g., stimulants, depressants, other hallucinogens), Congress avoided a collision course with the drug industry. In congressional hearings, the drug industry was relatively silent on the question of criminal penalties. Still, it was clear that the industry was very much opposed to the attachment of severe penalties for possession of widely used medicants. Like all other parties, they welcomed the severe punishment of those (i.e., pushers) who would induce drug abuse by others, particularly if they did so for profit.

Fourth, the across-the-board penalties for possession may have been Congress' way of handling the problem of the addict. Although Congress clearly believed that narcotic addicts were responsible for the large increases in property and violent crime in the nation, most did not take as hard a line as Chicago Police Captain Mueller presented earlier. As indicated, and despite their presumed social backgrounds, in the social context surrounding the enactment of the 1970 Act, addicts were seen as victims of "pushers" or their deprived social conditions, and as sick people in need of intensive rehabilitation rather than punishment. Maintenance of a possession offense provided sufficient legal resources for arrest of the addict; and removal of mandatory penalties (see the discussion below) provided sufficient flexibility to permit judges to steer the addict into rehabilitation. Finally, the relatively "soft" penalties for possession of even the most dreaded of controlled substances (e.g., the addictive narcotics) may have been a compromise strategy aimed at facilitating the maintenance of a repressive approach to drug control, while conceding a minor victory to those who would have protested too loudly against a strictly law enforcement approach to the problem.[6]

The reduction of possession penalties was one answer to dealing with the drug involvement of upper status youth. The elimination of mandatory penalties

for most traditional drug crimes was another. Doing so, however, was justified mainly on law enforcement grounds. Representative Bush of Texas aptly summarized the wishes of Congress to eliminate mandatory minimum penalties for drug offenses:

> The bill eliminates mandatory penalties, except for professional criminals. Contrary to what one might imagine, however, this will result in better justice and more appropriate sentences.
>
> Philosophical differences aside, practicality requires a sentence structure which is generally acceptable to the courts, to prosecutors, and to the general public. H.R. 18583 [the original House version of the bill that was eventually enacted] does this in several ways. Elimination of the mandatory minimums is one, and, and at the other end of the scale, severe maximums with mandatory minimums for the true professional is another. In between, penalties are graduated and flexible to cover the type of offense and type of offender.
>
> As a result, we will undoubtedly have more equitable action by the courts, with actually more convictions where they are called for, and fewer disproportionate sentences [United States Congress, 1970f, p. 33314].

In sum, in the name of achieving greater law enforcement, more equitable justice in courts, and preserving traditional American values of fitting the punishment to the crime and the criminal, Congress eliminated almost all mandatory penalities during a major drug crisis. In the meantime, the combination of discretionary penalty provisions, the reduction of first offense possession and selling of small amounts of marihauna to misdemeanors, and the provision of special first-offender treatment including expungement of records after a period of good behavior, facilitated the protection of middle and upper class youth from criminal stigmatization, and provided a symbolic offering of appeasement to the alienated among them.

DEALING WITH PUSHERS

As indicated, in the politics of deviance defining during the late 1960s and early 1970s, pushing drugs rather than drug use became the *sine qua non* of the drug problem. Pushers, especially large-scale dealers, were regarded as evil, corrupters of youth, and as ultimately responsible for the drug-related crimes of addicts. Throughout legislative debates, stress was placed on cracking down on this menace to society. Thus, in addition to the liberalizing provisions of the 1970 Act, the bill included a number of features geared toward control of this target population of "enemy deviants." Before proceeding, it should be noted that unlike users, pushers were not differentiated along race and class lines. While it is generally recognized that drug trafficking is racially and ethnically stratified (Ianni, 1974), the only relevant distinctions made in Congress were those between white middle class youth and other users, between users and pushers, and between small- and large-scale dealers.

Among the most coercive features of the Act are the enforcement provisions, and the extreme penalties provided for new categories of drug offenders (i.e., the continuing criminal enterprise and dangerous special drug offender provisions). These features of the 1970 Act are discussed below. Presently, we explain briefly why Congress did not regard the elimination of mandatory minimum penalties and the reduction of maximum penalties for traditional trafficking offenses as counterproductive to cracking down on major federal drug dealers.

We have already indicated that the elimination of mandatory penalties was viewed as necessary for the protection of middle class youth from the negative consequences of criminal drug control. In addition, this could be justified on the grounds that discretionary sentences would facilitate, rather than hinder, punishment of serious drug offenders because the resulting sentences would be more acceptable to the courts and prosecutors.

The reduction in maximum penalties for trafficking offenses is not as easy to explain. Such reductions were not the subject of controversy in either house of Congress. Nonetheless, we would not interpret the penalty reductions for pushers as an indication that Congress was in any way softening its attitude toward traffickers. To the contrary, the altered penalty structure did not reduce substantially the possibility of spending a large portion of one's life behind bars for distributing a controlled substance. One could still be imprisoned for as many as 15 years for first-offense distribution of heroin, where previously the maximum jail term was 20 years. Also, by imposing a mandatory special parole term onto the term of imprisonment received for trafficking, Congress extended the right of the state to intervene in the offender's life after release from prison. Also, the special parole term is not a substitute for regular parole; it begins after regular parole expires. In the case of parole revocation while serving a term of special parole, the original prison sentence is increased by the period of the special parole term, and time spent on parole does not diminish the penalty. Clearly, these provisions indicate that Congress was not "softening" its attitude toward the drug trafficker.

The features of the 1970 legislation which most clearly reveal Congress' coercive approach to traffickers are the provision of special extreme sanctions for those engaged in a continuing criminal enterprise (professional traffickers) and for dangerous special drug offenders. Persons found guilty of the continuing enterprise provision are subject to a mandatory penalty of from ten years to life imprisonment without the possibility of parole, probation, or suspended sentence. Dangerous special drug offenders could receive an additional 25 years of imprisonment for the violation of an offense that might otherwise net only a few years of confinement. Significantly, amendments establishing these offenses were passed overwhelmingly despite strong arguments questioning their constitutionality. Conversely, proposals attempting to eliminate or modify these amendments were defeated soundly.

Opponents questioned the necessity of these provisions, and in the case of professional traffickers, the wisdom of mandatory penalties in light of their questionable efficacy as law enforcement tools. However, opponents' main objections were to the imposition of these very severe penalties without full due process of

law. Representative Eckhardt of Texas summarized the position of those opposed to the continuing criminal enterprise provision:

> It is extremely important that minimum mandatory penalties be taken out. This is one of the recommendations of the American Bar Association's Committee studying the questions of criminal process. The argument, of course, is quite simple, and that is this: when the jury is confronted with a case in which if it finds the defendant guilty, the penalty must automatically be 10 years or more it may hold the accused not guilty because, under the circumstances, it feels that the mandatory penalty is too high.
>
> . . .
>
> The other difficulty is that the maximum penalty involved here is life. Given a situation in which someone is considered anathema in the community for reasons other than those involved in the offense and in which he can be got out of the way for life on the basis of passing marihuana cigarettes and maybe buying a $50 stash and distributing it, that man, because he is thought to have engaged in other activities that cannot be proven and perhaps are not true, can be removed from society for life by the judge issuing the sentence [United States Congress, 1970g, p. 33627].

Proponents of the measure (Representative Hunt of New Jersey, for example) countered as follows:

> There is nothing wrong with imposing a mandatory sentence on a hard headed pusher. Mitigating circumstances should not apply to a person of this nature. The only way you can handle narcotics and get rid of the situation is to incarcerate those main pushers and help those who have unfortunately become addicted [United States Congress, 1970g, p. 33629).

Congressman Poff of Virginia proposed the special dangerous drug offender provision of the 1970 Act as a complement to the continuing criminal enterprise section. The rationale was to give prosecutors the option of approaches, and to strengthen the statutes against possible constitutional attack. In Poff's words:

> With a maximum additional sentence of 25 years for offenders falling within the purview of this amendment, we can accomplish much today in assuring that society is rid of devastatingly evil forces who reap the fruits of drug traffic [United States Congress, 1970g, p. 33630].

Significantly, proposals attempting to eliminate or modify these amendments were defeated soundly, while the amendments establishing the offenses were passed overwhelmingly despite the arguments questioning their constitutionality. Following the adoption of the Poff Amendment, Representative Ryan summarized the sentiments of the opposition:

> Perhaps most perilous, an amendment has been adopted today for the sentencing of so-called dangerous special drug offenders which simply refutes the very basics of due process which have marked ours as a system of rule by law and not by arbitrary men.
>
> . . .
>
> But let me be blunt and say that this amendment is a subterfuge designed to allow the Government to incarcerate the defendants whom it cannot prove beyond a reasonable doubt have engaged in the past acts which will be taken into account in the hearing. This hearing, disguised as a procedure for sentencing is in fact, an unconstitutional trial on the issues of guilt, which only need be proved by a preponderance of the information and which is divested of the rules of evidence which attend a trial [United States Congress, 1970g, p. 33661].

In brief, Congress seemed quite eager to enact coercive measures to deal with the presumed source and symbol of the drug problem. Indeed, in their enthusiasm to punish traffickers, the legislators enacted amendments that bordered on being unconstitutional in violation of due process guarantees, and which at the very least failed to provide the defendant with a reasonable chance to establish his/her innocence. It should be noted that the difficulty of establishing proof that defendants are professional traffickers or especially dangerous could result in minimal use of the above two provisions (Sonnenreich et al., 1973). If so, then, despite the severity of the prescribed penalties, the provisions may be more symbolic than instrumental, providing a public statement and sound warning that society takes a dim view of drug trafficking and will not tolerate such activities.

ENFORCEMENT: THE NO-KNOCK PROVISION

Also indicative of Congress' intent to maintain a coercive approach to the drug problem are the enforcement powers and supplementary civil sanctions entrusted to the United States' Attorney General. King (1972, p. 318) has summarized the provisions most directly related to criminal law enforcement:

> The Department of Justice may use Treasury funds to hire informers, pay for incriminating information, and make purchases of contraband substances, with any sum or sums the Attorney General "may deem appropriate." All property connected in any way with a violation of the Act, . . . such as raw materials, equipment, packing and shipping containers, and aircraft, vehicles, or vessels used for transportation, are subject to seizure by the Attorney General and forfeiture to the United States. And in addition to the powers usually conferred on federal law enforcers, drug agents may act as compliance inspectors, make arrests for any offense against the United States, seize on sight any property they regard as contraband or forfeitable, and execute search warrants at any time of the day or night, with the controversial "no-knock" procedures if a judge has authorized it."

These and other enforcement provisions led King to conclude that the "proponents of 'soft' attitudes toward drug abuse have been routed, and the new federal drug police force has been given every armament and prerogative that could conceivably be conferred on a peacetime domestic agency" (King, 1972, p. 319).

To carry out the provisions of the Act, the Bureau of Narcotics and Dangerous Drugs was authorized to add at least 300 agents to its existing enforcement staff for the following year. An annual appropriations of $6 million dollars for the purpose of staffing beginning in fiscal 1971 was also authorized.

Enforcement provisions of the law met with little opposition in either House of Congress. The no-knock provision was an exception. In fact, the provision of no-knock authority was probably the most controversial provision of the entire bill (Sonnenreich et al., 1973). Proponents of no-knock argued that it was necessary to avoid quick disposal of controlled substances by suspects, and to avoid placing officers in danger of physical harm. They also noted that no-knock authority was provided for by common law or statutory law in at least 32 states,

had withstood Constitutional tests, and, that in places where no-knock was available it had neither been overused or abused.

In contrast, the many opponents of no-knock argued, that such a provision was: unnecessary, already available in the law, subject to easy abuse especially in an era of considerable concern about drug abuse, and, a bad precedent to set in a free society that values the sanctity of privacy. However, as in the case of the provisions discussed above, the main arguments against no-knock authority had to do with its questionable constitutionality. Senator Ervin of North Carolina, the most adamant opponent of no-knock, argued the case:

> Mr. President, when we pray the Lord's Prayer, we make this petition to the Almighty, "Lead us not into temptation." I think that this petition impliedly commands us not to lead others into temptation. And yet we have a Senate bill that will lead the law enforcement officers . . . to make false affidavits in order to obtain search warrants which would enable them to enter the private homes of American citizens like thieves in the night without notice and without warning.
>
> One of the strangest things is why the representatives of a free society are always trying to convert that free society by legislation into a police state. That is precisely what is being attempted on this occasion. My associates and I are attempting to save one of the basic freedoms of the American people, the right not be disturbed in their homes by an unreasonable search and an unreasonable seizure [United States Congress, 1970c, pp. 1159, 60].

Proposals by Senator Ervin to strike this provision of the bill were defeated soundly in the Senate, and no-knock authority was included as a provision of the 1970 Act. As with the continuing enterprise and the dangerous special drug offender provisions, Congress was willing to risk possible constitutional violations to achieve more coercive drug control.

SUMMARY AND CONCLUSIONS

On October 27, 1970, President Nixon signed into law the Comprehensive Drug Abuse Prevention and Control Act. That Act made significant changes in the federal approach to drug control, including establishment of a new and more complex set of penalties for violations of federal drug laws. Significantly, the new legislation was enacted during a period when public concern about drugs was high, and when Congress and the Administration believed that drug abuse, and its consequences (primarily street crime, violence, drug-related deaths, etc.), were on the increase. Further, for the first time in the history of federal drug control, drug use among superordinate as well as subordinate segments of the population was viewed as a significant part of the problem.

Throughout the twentieth centruy, Congress had responded to apparent changes in the levels and distributions of drug use simply by increasing criminal penalties (or establishing them where none existed to cover a particular type of drug use). In the present case, this rather straightforward but coercive solution would have placed higher status groups at risk of criminal stigmatization and its

presumed negative consequences. On the other hand, the simple lowering of penalties, as state courts have done in the face of greater drug use by reputable population segments, would have implied societal toleration or approval of drug use, and may have undermined the instrumental goals of reducing illicit drug use and associated problems (e.g., street crime and violence) by all segments of the community. The dynamics of the process through which Congress constructed a general law that would (1) deal with the drug-related behaviors of both subordinate and superordinate groups and (2) communicate societal disapproval of illicit drug use was the major focus of this discussion.

To address this question, a detailed analysis of congressional committee hearings and floor debates on the pending legislation was conducted. Our review of the congressional materials has led to the following general conclusions. First, Congress did not choose a strictly coercive approach to drug control at the risk of stigmatizing middle and upper status white offenders. Nor did it choose to liberalize across the board federal drug penalties in light of the rise in drug crimes among superordinate population segments. Instead, Congress redefined the drug problem as one of pushing drugs rather than using them, and developed a law oriented toward "saving" users (especially upper status youth) and punishing pushers, whatever their social backgrounds. Thus, in enacting the 1970 penalty provisions, Congress was concerned primarily with two target populations: young middle and upper class drug users, and hardcore traffickers and professional drug criminals. The former required protection from the criminal justice system; the latter required both the threat and actuality of severe punishment.

The penalties and other provisions that emerged from congressional debate reflect the compromises reached to deal with these two distinct populations. The reduction of penalties for first-offense possession and for distribution of small amounts of marihuana for no remuneration to misdemeanors; removal of mandatory minimum penalties; and the provision of special first-offender treatment, all served to minimize the possibility of subjecting middle and upper class youth to harsh penalties, and their presumed negative consequences. On the other hand, retention of a possession offense (albeit with very lenient penalties); the relatively minor reductions in maximum penalties for trafficking offenses; provisions of mandatory special parole terms; provision of extreme sanctions for two new offense categories of questionable constitutionality; and the supplementary criminal enforcement provisions provided the coercive policies required for handling (and warning) the second targeted population—major drug traffickers.

Although the downgrading of federal drug penalties was clearly motivated by the desire to protect upper status youth from criminal stigmatization, Congress was unwilling to liberalize penalties at the cost of effective law enforcement. Thus, the downgrading of all penalties, even for possession, was justified partially in terms of providing better justice and more efficient law enforcement. For example, the elimination of mandatory penalties was justified on the grounds that in so doing the punishment of serious drug offenders would be furthered (more certain) rather than hindered.

Some provisions of the 1970 Act were as much symbolic as they were instrumental. For example, retention of a possession offense within the federal code was, in large part for the purpose of indicating a lack of acceptance of indiscrim-

inate or nonmedical use of controlled substances. Also, the reduction of penalties for possession was in part a symbolic gesture to youth believed to be alienated from the legal system and society in general. Congress hoped that in making such a concession the credibility of law enforcement would be restored; and, one source of youth's disaffection with the American way of life removed.

In short, the above findings would seem to establish that penalty, and certain other provisions of the 1970 Act were a result of compromises which permitted Congress to (1) maintain a coercive approach to the drug problem for the purpose of dealing with one target population—major traffickers; (2) protect middle and upper class youth from stigmatization as criminal felons; (3) provide a symbolic gesture (an offer of appeasement) to disaffected youth believed to be alienated from the criminal justice system, and society in general; and (4) express congressional and societal condemnation of indiscriminate and nonmedical use of controlled substances.

Regarding discrimination, our examination of the statute and the decision-making process suggests that the discriminatory aspects of the legislation are limited to those provisions which minimize the consequences of criminal drug behavior for upper status youth. As indicated, in congressional debate legislators were very explicit that protection of this class of offenders was a major goal. Distinctions among drug offenders were made on the basis of their age, class, and social status. And, it was often suggested or implied that the same kinds of penalties ought not be applied to the "cream of American youth" as had been applied to conventional and less reputable types of drug users. Importantly too, the legitimacy of the above distinction was never called into question.

While race, class, and ethnic bias is apparent in Congress' characterizations of the nature of the drug problem, drug users from subordinate populations would seem to be beneficiaries, albeit unintended, of the more lenient penalties for possession offenses. An alternative scenario is possible, however. Since the downgrading of federal drug penalties was motivated almost exclusively by the desire to protect upper status youth from criminal stigmatization, the substitution of discretionary for mandatory penalties actually may have increased the likelihood of race- or class-based decisions in the application of sanctions. No longer would convicted defendants from different social backgrounds be subject to the same minimum penalties for illegal possession of drugs. Thus, in the face of persistent biases in the perception of drug users, and, in light of the presumed connection between drug use among conventional offenders and street crime, minorities and low-income defendants convicted of possession could be the recipients of substantially more severe sentences (e.g., imprisonment versus probation or fines) than their youthful upper status counterparts.

Discriminatory decision making was not evident in congressional discussions related to dealing with drug-trafficking. There were no references to the racial, ethnic, or class composition of this offender group. Indeed, the only major distinction drawn was that between small-scale and major dealers, with the latter types of offenders essentially becoming the scapegoats for the entire drug problem. Again, I would caution the reader that the absence of discriminatory intent does not mean that the law will be applied in an unbiased fashion.

With the provision of discretionary penalties, and especially during eras in

which politicians and the public call for a crackdown on drug traffickers, minority and low-income defendants could indeed bear the brunt of state social control of drugs. Particularly telling would be a situation in which minorities, who are generally confined to the lower levels of the drug trade, receive sentences for trafficking that are significantly more severe than those received by their counterparts with majority status. Elsewhere (Peterson & Hagan, 1984) we have attempted to assess the role of race and class in sentencing decisions during periods prior to and following the passage of the 1970 Act. Our findings there, as well as in the present research, suggest that discrimination in the law is more complicated than a simplistic application of conflict notions of legal decision making might suggest. More generally, our research suggests that studies examining the role of power, status, and class in legislative decision making, followed by, or in combination with, studies of the role of such variables in the application of the law will make possible a greater understanding of (1) the process of legislative decision making, (2) the extent to which people of different race, class, and ethnic backgrounds are protected and/or punished equally in our justice system, and (3) the relative merits of Kleck's (1981) argument that legislative decision making may have more to do with differential patterns of arrest, court, and prison statistics than criminal justice processing. To understand the complexity of interests involved in law-making, it is also suggested that future research consider laws that are complex, and that have implications for the interests and values of a variety of population segments, including upper status groups.

REFERENCE NOTES

1. Under the 1970 Act, abusable substances are classified into five schedules based upon their dangerousness and potential for abuse. Restrictions and penalties are downgraded as one moves from controlled substances in Schedule I (e.g., hardcore illicit narcotics such as heroin, and the hallucinogens—including marihuana and LSD—for which there is no currently accepted medical purpose) to those in Schedule V (e.g., all the exempt narcotic preparations—e.g., cough syrups—which may be sold over the counter without a prescription).
2. Cracking down on drug abuse and trafficking and related street crime was a major part of the Nixon Administration's law and order agenda.
3. The continuing criminal enterprise provision is aimed at the importer of controlled substances and high-level drug dealers who command a drug distribution network. Specifically, a person is considered to be engaging in a continuing criminal enterprise if she or he (1) commits a felony which is part of a continuing series of drug offenses, (2) acts in concert with at least five other persons to commit these offenses, (3) commands some organizational or supervisory position with respect to the group, and (4) obtains substantial income from the enterprise. Notably, this is the only offense under the 1970 Act which involves a mandatory sentence and which does not permit suspended or probated sentences.
4. A defendant who is over 21 years of age and has been convicted but not yet sentenced for a drug felony can be declared a dangerous special drug offender in a separate judicial hearing prior to sentencing. A dangerous special drug offender is defined as one who (1) has been previously convicted on two or more occasions of a felony violation of the federal or state drug law and who has been sent to prison for one or more of those offenses, unless more than five years has lapsed between the present offense and defendent's release from prison or the defendant's commission of the last previous offense, or (2) has been guilty of deriving a substantial source of

income from a pattern of dealing in drugs and manifests special skill or expertise in that dealing; or (3) in relation to his/her violation, is involved in a conspiracy with three or more other persons to deal in controlled substances and the defendant acted, or agreed to act, to direct such conspiracy or to give or receive a bribe, or to use force in connection with such dealing. Notably, the government only has to establish that one is a special drug offender by a preponderance of the *information* rather than by the usual and more stringent beyond a reasonable doubt standard.

5. In one sense, maintaining penalties for possession offenses may have been of purely symbolic significance. Congress members and witnesses emphasized on a number of occasions that federal enforcement efforts (money and personnel) had never been, and should not be, expended on small time users or even small time pushers (e.g., addicts who sold limited quantities of drugs to supply their own habits). Dealing with such offenders had always been left to state and local authroties despite the offenses being violations of federal drug laws as well. By contrast, federal efforts have been, and it was noted should be, concentrated on the major illegal suppliers of drugs.
6. Some members of Congress were displeased with the overwhelmingly law enforcement focus of the entire bill. They preferred a research, education, and rehabilitation approach to the drug problem. Senator Hughes of Iowa was perhaps the most adamant supporter of a health rather than a law enforcement orientation to dealing with drugs. On the floor of the Senate, Hughes proposed a number of amendments that would have placed more emphasis on research, prevention, and rehabilitation. Most of these proposals were defeated by a large margin, but some concessions were granted. These were contained in "Title I—Rehabilitation Programs Relating to Drug Abuse" of the 1970 Act and consist of several amendments to the Community Mental Health Centers Act. Our point is, however, that the relatively "soft" penalties for possession of even the most dreaded of controlled substances (e.g., the addictive narcotics) may have been a compromise strategy aimed at facilitating the maintenance of a repressive approach to drug control, while conceding a minor victory to those like Senator Hughes, who would have been very displeased with a strictly law enforcement approach to the problem. If this is the case, then the penalty structure only coincidently benefited the addict.

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