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A Critical Look at the National Drug Control Strategy

Jerome H. Skolnick†

In September 1989, the Bush Administration published its drug control policy document, the National Drug Control Strategy, prepared under the direction of William J. Bennett, Director of the Office of National Drug Control Policy. As a study of the appropriate responses to the nation's drug problem, the Strategy is an important, well-reasoned, and engagingly written document. It acknowledges the importance of treatment and education strategies as responses to the American drug problem. While it does not deny the limitations of international and other law enforcement initiatives, the Strategy's primary message advocates an "unprecedented" expansion of police, prisons, prosecutors, courts, and interdiction—much more of the same, evidently on the theory that we have been losing the war on drugs because of a lack of resolve.

By adopting "The War on Drugs" as its overriding metaphor, the Strategy advocates a vast expansion of the apparatus of social control—particularly law enforcement and prisons—into what begins to resemble a semi-martial state. In his September 1989 address to the nation, President Bush proposed that the Federal Government increase spending by $1.5 billion for enforcement and $1.5 billion for interdiction, but only by $321 million for treatment and $250 million for education. The Strategy advocates that billions more be spent by the states, particularly to expand the criminal justice system. In January of this year, President Bush again proposed to add $400 million to the $800 million federal drug control budget for the

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2. The Strategy suggests that "[m]aking streets safer and drug users more accountable for their actions requires the criminal justice system to expand and reform in an unprecedented way." Id. at 24.

1990 fiscal year in order to intensify the war on drugs. The increased budget includes primarily law enforcement programs that would allow the military to play a greater role, establish a multi-agency drug intelligence center, and bolster border controls and local police strike forces.\(^4\)

These priorities seem to flow naturally from the attitudes expressed toward drug use and the role of government in Mr. Bennett's introduction to the *Strategy*. Drug use is said to "degrade[] human character."\(^5\) A good society, according to Mr. Bennett, is "purposeful and self-governing" and would "ignore[] its people's character at its peril."\(^6\) Yet it seems ironic that while Iron Curtain countries are opening doors to freedom, we should address a serious social problem with what is largely a draconian solution. Endorsed by the President, the *Strategy* will shape not only the future of the nation's drug control policies, but also of our criminal justice system and of acceptable levels of governmental intrusion into our private lives.

The Bush/Bennett drug control policy attributes the choice to use any drug, in any amount, to the deficient moral character of individuals, and their punitive measures flow naturally from that moralistic conception. I believe that a social, psychological, and economic understanding of, and response to, the nation's drug problem will take us further, and at less cost to our liberties, than the primarily punitive approach advocated in the *Strategy*. The drug problem has two facets: one is abuse and addiction, whether of legal or illegal drugs; the second is the crime and violence connected to illegal drug use and sale. The Bush/Bennett plan to expand law enforcement in an unprecedented way will have little impact on either of these problems because it ignores or does not appreciate the imperatives driving people to use and sell illegal drugs; underestimates the dilemmas faced by law enforcement in controlling the distribution and use of drugs; is insensitive to the social and economic underpinnings of drug marketing and use in the United States; and is oblivious to the implications of a "war" on drugs for the character of the nation.

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4. N.Y. Times, Jan. 25, 1990, at A20, col. 1. The new Bush proposals also discussed drug treatment efforts in federal, state, and local prisons, but only because the administration was criticized for neglecting these issues under the *Strategy*’s plan. *Id.*
6. *Id.*
I. The War On Drugs and Constitutional Freedom

Let me put the issue of warring on drugs in perspective. At one extreme, we do know how to rid ourselves of the drug problem. As a society we could institute a rule that anyone caught selling or possessing illicit drugs will be summarily executed by a special police narcotics unit. Few of us, however, would choose to live in such a society. More importantly, that society's narcotics police would not constitute what we in this society ordinarily mean by the concept of police. For although it is true that we invest the police with awesome powers—to arrest, to detain, to search, to use force including deadly force—all of these are monitored and constrained by our Constitution. So too are extreme punishments limited under the cruel and unusual punishment clause of the Eighth Amendment.

That our conceptions of police and punishment implies fealty to the Constitution and the rule of law could be considered a platitude. But it is a commonplace worth repeating when measures such as the removal of bail for drug dealers, deployment of the National Guard, curfews for teenagers, street sweeps of supposed gang members, shooting down civilian planes, random drug testing, crop eradication, and zero tolerance are being put forward as a first line in the war against drugs. Military style boot camps are one of Mr. Bennett's favorites since "their rigorous regimes and austere conditions" are said to "bring a sense of order and discipline to the lives of youthful, non-violent first time offenders. . . ." Mr. Bennett is prone to assertions of this kind without a nod to empirical verification of the assertion. Will boot camps actually straighten out most drug users and dealers, or will they straighten out those who could have been reformed by less dramatic measures? Or might boot camps produce well conditioned and vengeful users and dealers? Whether such "tough" expedients contribute much to solving the drug problem remains to be seen. But they can support a climate for diluting constitutional constraints on detention, search and interrogation.

These days everyone seems to want to enlist in the drug war on the apparent belief that we have a national cocaine emergency or crisis. Even recent Supreme Court decisions limiting the scope of

7. STRATEGY, supra note 1, at 25.
8. Pointing out that Mr. Bennett's Strategy may have exaggerated the nation's cocaine epidemic by misinterpreting the results from a National Institute on Drug Abuse (NIDA) survey, my colleagues Frank Zimring and Gordon Hawkins write, "The policy proposals in the National Drug Control Strategy can thrive only in emergency conditions." Zimring & Hawkins, Bennett's Sham Epidemic, N.Y. Times, Jan. 25, 1990, at A23, col. 2.
the procedural protections of the Fourth and Fifth Amendments cannot be comprehended except as a response to the urgencies of drug trafficking. How else could the court conclude that police helicopter surveillance at 400 feet above a private home is not a search because any member of the public could legally have been flying at an altitude of 400 feet over the home? Or that one who wraps his trash in opaque plastic bags, which the garbage collector was expected to pick up and deposit at the garbage dump, has “knowingly expose[d it] to the public”? We will doubtless see more of such creative reasoning against the backdrop of drug trafficking and the war on drugs.

II. The War on Drugs: Misguided Perception and Flawed Results

The Strategy’s approach is built on a misguided premise about the drug problem and as a result fails to address the root of the problem. The flawed premise is that drug dealing and use is something morally repugnant in and of itself; the solutions that flow from this premise treat people’s involvement in drugs as natural crimes which must be punished severely.

A. Mala in Se and Mala Prohibitum

Criminological theorists classically distinguish between “natural” and “regulatory” conceptions of crime. A natural conception of crime “embodies a sense of an act that is deeply wrong, that evokes strong communal disapproval, and that is thought to deserve, indeed to call for, a punitive sanction.” Ordinarily then, when we think of crime we think of homicide, rape, and assault. We think of these because all are “natural” wrongs, mala in se, acts wrong in themselves.

By contrast, under a “regulatory” conception, crime is not grounded in moral intuition. It is simply conduct prohibited by a legislature to which penalties are attached, or mala prohibitum. For example, the criminalization of a real estate developer’s failure to file required forms to a federal agency would be considered mala prohibitum. Similarly, it might be considered mala prohibitum to accept bets on horse racing in a city where off-track betting is legal (e.g.,

New York) because accepting these bets does not conform to the regulations under which legal horse race betting is permitted. In neither of these cases, however, could the conduct that is prohibited be considered *mala in se*.

The key question that any drug strategy must address is whether the sale and use of marijuana, cocaine, and heroin, is comparable to illegal bookmaking (*mala prohibitum*) or to homicide (*mala in se*). How one answers that question will in large part determine one's evaluation of the Bush/Bennett drug control policy.

1. Mala in se: the Bennett plan and casual users. It is clear that underlying the *Strategy* is the belief that not only the sale but also the use of illegal drugs is *mala in se*. Drugs are viewed as a grave threat to society, and drug use is in a category with murder and rape. As a result, for Mr. Bennett it is morally impermissible not to spend millions on prisons and police for a war on drugs. Mr. Bennett wants to walk us down the crackdown road. He advocates expanding and reshaping the criminal justice system “in an unprecedented way” with not only more police, but more “jails, prosecutors, judges, courtrooms, prisons and administrative staff.”

From Mr. Bennett's perspective that drug use is inherently immoral, it follows that every illegal drug user, of whatever drug, of whatever quantity and frequency, is considered a threat to society and must be held “accountable.” If any use of any drug is immoral, no deviation is permissible. From this perspective it makes sense to stigmatize the casual user as the root villain of the drug problem.

The casual user, however, is not the root of the drug problem; the addict is, and the crack cocaine addict in particular. The *Strategy* itself begins with the “good news.” Citing a July 1989 survey by the National Institute on Drug Abuse (NIDA), the *Strategy* reports that “[c]urrent use of the two most common illegal substances—marijuana and cocaine—is down 36 and 48 percent respectively.” But it quickly moves to the bad news. Drug related crime and violence continue to rise, the *Strategy* points out, and the threat drugs pose to public health has never been greater because drugs are cheap and “available to almost anyone who wants them.”

Who wants drugs? According to another self-report study, casual users do not use much of the total cocaine consumed in the United States. The National Narcotics Intelligence Consumer Committee found that “heavy users” comprise 6.9% of the user population, yet

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14. *Id.* at 1.
15. *Id.* at 2.

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The Strategy does acknowledge that treatment for drug addiction is necessary and appropriate, and that we need to expand and improve our treatment system. At the same time, casual users, not addicts, are portrayed as the disease carriers of the cocaine world. The theory plays out something like this: addicts need treatment, but they do not contribute much to the spread of drug use. An addict is a "bottomed out mess" and his drug use is therefore "not very contagious." But the casual user is an attractive person "likely to have a still-intact family, social and work life." He is more attractive than the addict, so his drug use "is highly contagious."

The Strategy notes that crack cocaine is our biggest drug problem. However, it does not differentiate among drugs when discussing the spread of drug use. Casual users of alcohol, marijuana, and powder cocaine may be otherwise attractive people. But crack is highly addictive, and few addicts are attractive, as the Strategy notes. It is thus hard to understand how casual users could be the reason behind the most serious aspect of the drug problem—the rapid spread of crack cocaine. Mr. Bennett has not asked the relevant questions: Who gravitates toward crack use? Are first-time crack users drug-free innocents, unaware of risk, and seduced into use by sophisticated casual users? Or, more likely, are they people who have already used alcohol, marijuana, powder cocaine, and perhaps some other drugs, and who are seeking a new high without having been influenced by a "contagious" drug-using friend or relative? And if this is so, how can we assume that occasional, sporadic, or recreational users of powder cocaine—the "highly contagious" users to whom the Strategy refers, and who are cutting back on use—induce innocents to use crack cocaine?

The Strategy's arguments about drug initiation and the role played by the casual user would certainly be clearer, and perhaps more persuasive, if statements of fact and value were separated. It is one thing to assert that drug users should forgo drugs because their use

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16. These data are cited in Cloud, Cocaine, Demand, and Addiction: A Study of the Possible Convergence of Rational Theory and National Policy, 42 VAND. L. REV. 725, 752 (1989).

17. Self report data on drug use must be read skeptically. Household surveys capture only those in surveys. Heavy drug users may not reside in a household, may be unstable, and may underestimate their use. Casual drug users may be continuing to use drugs but failing to report use when asked by survey researchers.

18. STRATEGY, supra note 1, at 11.

19. Id.

20. Id.
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may encourage others, who may lose control.\textsuperscript{21} But it is another to suggest that casual drug use is "a grave issue of national concern."\textsuperscript{22} The \emph{Strategy} offers very little support for this assertion. Its only reasoning is that there are millions of casual users, each of whom "represents a potential agent of infection for the non-users in his personal ambit."\textsuperscript{23} We should wonder whether casual drug use is really the cause of our drug problem, or the scapegoat?\textsuperscript{2}

Because casual use seems to be declining, and because addicts consume most of the cocaine, a focus on the casual user is puzzling.\textsuperscript{24} How can we account for it? Could it be that it virtually insures success, since casual drug use seems to be flagging? Or could it be that denunciation of the casual user, who is more likely to be white and middle class, relieves Mr. Bennett of accusations that the law enforcement side of the war on drugs surely will turn out to be disproportionately a war on minority sellers and users? Or could it be that Mr. Bennett does not wish to focus on the addict, because doing so would shift the locus of the war on drugs away from police and punishment to treatment, rehabilitation, and the achievement of the social and economic conditions under which treatment is most likely to work? Or could it be mainly that the casual user, a person of flawed moral character, is a threat to the values of order, discipline and authority so warmly embraced by Mr. Bennett?

There is a further, practical reason for stigmatizing the casual user. Mr. Bennett sees drugs as \textit{mala in se}. But he is shrewd enough to realize that a view based merely on morality is insufficient in formulating policy. If casual use can be shown to have a practical, harmful effect—\textit{i.e.}, the "contagious" spread of the drug "disease"—the more confident he will be able to justify cracking down on an activity that he sees as basically immoral. It is this reason that prompts Mr. Bennett’s \emph{Strategy} to insist that casual drug users are a primary cause of our drug problem.

\begin{itemize}
  \item \textsuperscript{21} This is a classic value statement, a homily first advanced by St. Paul in Romans 14 and employed by turn of the century prohibitionists: "...it is right not to eat meat or drink wine or do anything else that makes your brother stumble." St. Paul was not, however, advocating punishment for those who set a stumbling block, but rather relying on moral suasion, urging us to "[n]o more pass judgment on one another, but rather decide never to put a stumbling-block or other hindrance in the way of a brother."
  \item \textsuperscript{22} \textit{Strategy}, supra note 1, at 11.
  \item \textsuperscript{23} \textit{Id.}
  \item \textsuperscript{24} A recent newspaper article reports that state law enforcement officials are taking up Mr. Bennett’s strategy of casting a wider net to round up casual users. Mark Kleiman of Harvard’s Kennedy School of Government is reported to have said that such a strategy will not have a large effect on the overall drug market or on the level of property crime and violence, since research on the cocaine market shows that people who use it once a week or less make up only ten to fifteen percent of the total demand for the drug. \textit{Wall St. J.}, Jan. 31, 1990, at A1, col. 1.
\end{itemize}
2. Alternative views: mala prohibitum. Those who believe that drug use is mala prohibitum fall into two basic camps. One view regards drug use in classical libertarian terms, as a private matter, “of doing as we like, subject to such consequences as may follow, without impediment from our fellow creatures, so long as what we do does not harm them, even though they should think our conduct foolish”. In other words, the libertarian regards the question of whether drug use is morally repugnant as irrelevant, so long as drug use does not impose any tangible harm on others. This group will likely advocate legalization, as do William Buckley, Milton Friedman, and the American Civil Liberties Union.

A second view regards drug use as at worst undesirable, unfortunate, even deviant, but not necessarily so harmful as to justify its characterization as a “crime.” Drug use should be regulated, not because it is a serious criminal offense, but because drug use entails external costs that society must bear. This group is likely to balance the costs and benefits of a proposed policy, and might entertain legalization, as does George P. Shultz, who as Secretary of State led the Reagan Administration’s overseas crop eradication program.

B. The Consequentialist Critique

How should we think about drugs? If one accepts the Strategy’s underlying assumptions, it is difficult to argue against its combination of unprecedented punishment and moral regeneration. But if one rejects, or is even unsure of, the underlying assumptions and perceptions of the problem, the Strategy invites us to ask whether its proposals will work and whether alternative policies might work better, and at less cost to the values of a free society.

There is much disagreement, especially within the policymaking and academic communities, over the appropriate definition of and response to the drug problem. Mr. Bennett has gained his share of supporters as the social acceptability of drug use has shifted dramatically toward moral intolerance over the past twenty years. Politicians are responding to an electorate demanding higher penalties for drug dealing and use. However, Mr. Bennett’s view by no means represents a consensus.

Many people maintain quite different attitudes toward drug use, depending on the levels of intoxication and the time, place, and occasion for intoxication. They are ambivalent about the moral

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blameworthiness of both drug use and addiction, and some might regard a state of mild psychoactivity, whether from marijuana, alcohol, or cocaine, as morally acceptable at certain times.

Since there is much debate about whether drug use is a moral or a regulatory wrong, one must question the degree to which sanctions for illegal drug use should be retributive. As Herbert Packer observed:

The extent of disagreement about moral judgments is an obvious reason for hesitancy about an automatic enforcement of morals. There have been monolithic societies in which a static and homogeneous ethnic, religious, and class structure conduces to widely shared acceptance of a value system. But that is hardly a description of the reality of twentieth-century American society, or of its pluralistic and liberal aspirations. In a society that neither has nor wants a unitary set of moral norms, the enforcement of morals carries a heavy cost in repression. We don't begin to agree about the "morality" of smoking, drinking, gambling, fornicating, or drug-taking, for example, quite apart from the gap between what we say and what we do. The more heterogeneous the society, the more repressive the enforcement of morals must be.27

If, as Herbert Packer suggests, there is no consensus that drug use is inherently despicable, like forcible rape or felonious assault, then we would have no intuitive sense of deserved retribution. This does not necessarily mean that drug use should not be penalized, but rather that consequentialist arguments stressing the impact of deterrence, incarceration, and rehabilitation will make more sense to us than hortatory ones. People will ask, "What works?"—rather than asking, "What is just?"

To begin such a policy examination, it is important to set out some fundamental dilemmas and limitations of an "unprecedented" expansion of the criminal justice system and drug law enforcement. These limitations are, I suggest, virtually inevitable in the context of enforcing the criminal law for crimes based on a market economy, involving entrepreneurs who sell popular illegal products.

III. Law Enforcement Dilemmas

A. Supply and Demand

Law enforcement efforts must be sensitive to the relationship between supply and demand in the drug market. Any law enforcement measure that focuses on only one component of the supply chain

and ignores the changing behavior of suppliers and consumers is bound to be ineffective. The direction of current law enforcement measures, as reinforced by the Strategy’s proposals, faces the following dilemmas when the forces of the drug market are taken into account.

1. Demand generates supply. The Strategy acknowledges that “[d]espite interdiction’s successful disruptions of trafficking patterns, the supply of illegal drugs entering the United States has, by all estimates, continued to grow.”

Why should that have happened? One reason is that demand generates supply for drugs. Demand for drugs in the United States and Europe has contributed to the growth of the cocaine business in Colombia and Peru, the world’s main growers of coca. The rise in production increases supply, which causes a drop in price. Price reduction in turn further invigorates demand, which stimulates the whole cycle again. As a result of the greatly increased production of cocaine, street prices of cocaine have dropped dramatically, by at least eighty percent since the Reagan Administration introduced its War on Drugs in 1982, headed by then Vice-President Bush.

2. Efficient suppliers: survival of the fittest. At the same time, the Strategy does acknowledge what I think of as the Darwinian Traf-ficker Dilemma. “As we have expanded our interdiction efforts,” the Strategy states, “we have seized increasing amounts of illegal drugs. Stepped up interdiction has also forced drug traffickers to make significant operational changes . . . . Every time we disrupt or close a particular trafficking route, we have found that traffickers resort to other smuggling tactics that are even more difficult to detect.” This is undoubtedly true, but it argues against—rather than for—stepped up interdiction. As we develop increasingly sophisticated tactics for combating both narcotic production and smuggling, only the stronger and more efficient producers and smugglers survive. These larger, better organized drug operations with wide

28. Strategy, supra note 1, at 73.
29. The notorious Peruvian guerrilla organization, the Shining Path, has become deeply involved in the narcotics business. It serves as a broker for coca growers, collects taxes from traffickers, and protects both from security sources. See, e.g., N.Y. Times, Dec. 6, 1989, at A13, col. 1.
30. The dramatic drop in the street price of cocaine can be observed by comparing prices reported in 1982, see, e.g., Wall St. J., Aug. 5, 1982, at 1, col. 1 (reported wholesale price of $60,000 per kilogram, and thus presumably a higher street price), and prices estimated by California police in my interviews in 1989 (estimation of recent street price range of $10,000-12,000 per kilogram).
31. Strategy, supra note 1, at 73.
distribution networks are able to funnel a large amount of drugs into the United States with virtual impunity, heightening supply and eventually lowering cost.\textsuperscript{32}

Can the borders be sealed? Not according to Rand Corporation economist Peter Reuter who studied the question for the Department of Defense. He concluded that “the U.S.-Mexico border can be crossed at many points . . . and a high value crossing can be accomplished very suddenly by a single individual in a large crowd of similar individuals. . . .”\textsuperscript{33} Thus, the sheer number of people who make border crossings each year aggravates the problem of porous borders. As a Mexican-American state narcotics agent in California observed to me: “Four-hundred thousand of my people cross the border illegally every year. How can you stop a much smaller number who carry a kilo or two of cocaine on their back?”\textsuperscript{34}

What is the Strategy’s justification for interdiction? The Strategy claims that interdiction “has major symbolic and practical value.”\textsuperscript{35} The symbolic value is gained from showing foreign governments and trafficking organizations our commitment to combating the drug trade. But symbolism seems an odd reason for policy, resting neither on practical achievement nor on canons of justice. Still, much of the proposal is grounded on symbolic themes and on the appearance of determination, rather than on a careful assessment of short and long range outcomes.

Practically, interdiction is said to “introduce another level of risk to the individual drug smuggler.”\textsuperscript{36} Yet, while defending interdiction, the Strategy concedes that “[i]nterdiction alone cannot prevent the entry of drugs or fully deter traffickers and their organizations.”\textsuperscript{37} The Strategy offers some reasons for interdiction’s failure, but does not appreciate other important ones.

3. Interdiction: ineffective tax on smuggling. The Strategy fails to recognize the inconsequential costs that interdiction imposes on drug trafficking. Interdiction is supposed to reduce street sales by increasing smuggling costs—in effect, taxing smuggling—and thus

\textsuperscript{32} The financial sophistication of the Colombian cocaine cartels, for example, will enable them to conduct “business as usual” even after the fall of Panama, according to Rand Corporation expert Peter Reuter. \textit{See} U.S.A. Today, Dec. 17, 1989, at A8.
\textsuperscript{34} Skolnick, Cortel, Navarro & Raab, \textit{The Social Structure of Street Drug Dealing}, CALIF. BUREAU OF CRIM. STATISTICS FORUM (Off. of Att’y Gen. 1988) [hereinafter \textit{Social Structure}].
\textsuperscript{35} STRATEGY, \textit{supra} note 1, at 74.
\textsuperscript{36} \textit{Id.}
\textsuperscript{37} \textit{Id.} at 73.
raising the street price. This assumes that smuggling costs constitute a significant percentage of street price. But that simply is not true. It is relatively cheap to produce and refine a kilo of cocaine, perhaps around $1000 for a kilo that might eventually retail for $250,000 when broken down into quarter or even eight gram units. Smuggling costs might amount to an additional few percent of the retail price. Most of the retail price is divided among those who distribute it on this side of the border. Rand economist Peter Reuter writes, "Fully 99 percent of the price of the drug when sold on the streets in the United States is accounted for by payments to people who distribute it." 38 Thus, if a kilo of cocaine retails for $100,000, smuggling costs account for around $1,000. A doubling or tripling of smuggling costs accordingly has a negligible impact on street price. Combined with the vastly increased production which has driven prices down, interdiction has had little, if any, positive effects—and these can be outweighed by unanticipated side effects.

4. Drug hardening and demand substitution. When the Nixon administration succeeded in reducing the supply of low potency Mexican marijuana to California in the early 1970s, agriculturally skilled drug entrepreneurs developed a high potency marijuana (sensimilla) industry in northern California, generating a market for a drug five or more times as potent. This example is illustrative of a situation I call the Drug Hardening Paradox. The more successful law enforcement is at cutting off supply, the more incentive drug dealers have for hardening drugs—i.e., developing varieties that are more potent, portable, and dangerous. Thus, the recent crackdown by state narcotics agents on the California marijuana market has reduced its supply, but crack cocaine has now emerged to replace marijuana as it is presently less expensive and more available on California streets. In sum, law enforcement tactics may create more severe public health problems by generating demand for and production of more potent and dangerous drugs.

A second effect of supply reduction that complements the drug hardening phenomenon is what I call the Demand Substitution Paradox. To the extent that different types of drugs are substitutes, the rise in the price of one drug will cause consumers to seek out cheaper alternative drugs. Twenty or thirty years ago, heroin was the "problem" drug in American society. 39 Today it is crack cocaine.

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If we succeed in destroying agricultural drugs through crop destruction efforts in Peru, Bolivia, and Colombia, we could find an increase in the supply of synthetic, designer drugs that are more potent and destructive than anything we have yet seen. To the extent that particular drugs wax and wane based on interdiction, new drugs will be demanded by consumers and supplied by clever entrepreneurs. Indeed, a powerful new drug, a colorless and odorless form of crystal methamphetamine—street name “ice”—is sweeping through Hawaii and has invaded mainland cities including San Francisco, Los Angeles, New York, and Seattle.\textsuperscript{40} It may only be a matter of time before the drug finds its way across the country to replace crack as the drug of choice during the 1990s.

B. Corruption

Whatever the latest fashion in drug use, manufacturers, smugglers, and distributors can operate more efficiently by corrupting public officials. The \textit{Strategy} does not discuss corruption, another dilemma confronting law enforcement efforts in the “war” on drugs, although it discusses “turf battles” among federal enforcement agencies.\textsuperscript{41} A discussion of inter-agency rivalry is acceptable because it is a normal and acceptable aspect of bureaucratic processes.\textsuperscript{42} Corruption, on the other hand, is unmentionable. Any strategy, however, which fails to consider the possibility and ramifications of increased corruption in the wake of expanded law enforcement is fatally flawed.\textsuperscript{43}

As we attempt to pressure foreign producers, we will have to work with authorities in such countries as Colombia, Bolivia, Panama and Peru, countries where the bribe is a familiar part of law enforcement. Thus, the State Department’s Bureau of International Narcotics Matters found that Jorge Luis Ochoa, a major Colombian drug trafficker, “was able to buy his freedom through the intimidated and vulnerable Columbian judicial system.”\textsuperscript{44} Tina Rosenberg observed:

\begin{flushright}
\textsuperscript{40} Boston Globe, Dec. 8, 1989, at 3.
\textsuperscript{41} See \textit{Strategy}, supra note 1, at 7-8.
\textsuperscript{42} The \textit{Strategy} suggests that “we should be extremely reluctant to restrict within formal and arbitrary lines” the extent of bureaucratic bickering when it is attributable to the “overriding spirit and energy of our front-line drug enforcement officers. . . .” \textit{Id.} at 8.
\textsuperscript{44} U.S. DEP’T OF STATE, BUREAU OF INT’L NARCOTICS MATTERS, INT’L NARCOTICS CONTROL STRATEGY REP. 86 (Mar. 1988).
\end{flushright}
In general, the closer an institution gets to the traffickers, the more corrupt it becomes. Cocaine’s new income opportunities for judges have been well documented. Prosecutors are less corrupt, but it is a matter of logistics, not morals: it is simply easier to win cases by bribing judges, or the police. . . . Policemen, the infantry in the war on drugs, are usually young men from slum neighborhoods with third grade educations—exactly the profile of a drug dealer, and the line between the two tends to blur on the job.  

No matter how honest U.S. drug enforcement agents operating abroad are, they may find themselves operating in a climate of official corruption.

Domestic police officers are equally susceptible to these temptations. Unfortunately, we are all too familiar with the legendary narcotics scandals which have plagued police departments in various cities. Perhaps the most famous scandals have occurred in New York City where the Knapp Commission investigations reached both narcotics and other forms of vice. Patrick V. Murphy, a man with a reputation for reform, was recruited as Police Commissioner in New York in the wake of the scandal uncovered by the Knapp Commission. In his autobiography he writes, “[W]e ultimately discovered that the narcotics units under the previous police administration had made major contributions to the city’s drug traffic. It was this area of corruption more than anything else which most shocked me.”

Narcotics corruption is not confined to New York City. Deputies in the Los Angeles County Sheriff’s Department were recently involved in what The Los Angeles Times called “one of the worst corruption cases” in the Department’s history. Videotapes revealed one deputy hurriedly taking three $10,000 bundles of $100 bills from a dealer’s shoulder bag and putting them into his partner’s leather briefcase. Although the possibilities of corruption exist in any form of enforcement against criminal activity, it is particularly in drug enforcement that agents and officers encounter large sums of cash and drugs with great market value. In short, corruption must be counted as one of the anticipated costs of an unprecedented expansion of drug law enforcement.

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C. Financing Law Enforcement

The "unprecedented" expansion of police, prosecutors, and prisons implicates a third set of problems, which I call the Lock 'em Up Dilemma. Attempting to solve the drug problem by putting more people in jail may make the problem worse, at the expense of taxpayers. State and federal prison populations have virtually doubled in the 1980s, and the rate of our prison population per 100,000 of total resident population has increased from 96 in 1970 to 228 in 1987.

Overcrowded jails and prisons are bulging with newly convicted criminals, and also with criminals whose probation and parole were revoked. In California, for example, the number of parole violators returned to prison between 1978 and 1988 increased by about eleven times. A very likely reason for this rise is the increased frequency with which drug tests are being required of parolees. Revised estimates by the California Department of Corrections projects that the state's prison population will grow by more than fifty percent by the year 1994, and that the state will need to build up to twenty prisons to house the expected growth in inmate population. As our advanced drug testing technology consigns more parolees and probationers to prison, we cannot continue to convict and impose longer sentences without building many new prisons.

Mr. Bennett recognizes this critical lack of prison space. He acknowledges that "[m]ost state prisons are already operating far above their designed capacity." He also recognizes that "many states have been forced under court order to release prisoners before their terms have been served whenever a court-established prison population limit has been exceeded." His solution, however, is to encourage state governments to persuade their citizens to

48. At year end 1988, the number of prisoners under the jurisdiction of federal or state correctional authorities reached 627,402, compared to 329,821 in 1980. This amounts to an increase of approximately 90% in eight years. BUREAU OF JUST. STATISTICS, U.S. DEP'T OF JUSTICE, BULLETIN, PRISONERS IN 1988 (1989).
50. See MESSINGER, BERECOCHA, BERK & RAUMA, PAROLEES RETURNED TO PRISON AND THE CALIFORNIA PRISON POPULATION 13 (Table 5) (California Bureau of Criminal Statistics and Special Services Collaborative Report, 1988). In 1988, about 43% of the admissions to California state prisons were parole violators returned to prison by the Parole Board without a conviction for a new charge. Id. at 11 (Table 3).
51. Id. at 5.
52. San Francisco Chron., May 18, 1989, at A2, col. 3.
53. STRATEGY, supra note 1, at 26.
54. Id.
support new prisons. "The task of building [prisons]," he writes, "remains with state governments, who poorly serve their constituents when prison construction is stalled or resisted."\(^5\)

Yet not a word appears about how to persuade citizens to pay for the continuing and rising expense of maintaining prisons. Most citizens have read the President's lips saying "no new taxes," but apparently this slogan applies only to the Federal Government. Furthermore, even those citizens who demand longer and more certain prison sentences are reluctant to live next door to prisons. Highly publicized plans for a 700 bed prison to house convicted Washington, D.C. drug dealers at Fort Meade, Maryland were embarrassingly withdrawn the day after they were announced because "there was too much public resistance."\(^6\)

**D. Ineffective Criminal Sanctions**

Even if we could build new prisons in spite of financial and community objections, a more fundamental problem to be considered is the failure of criminal sanctions to achieve purported goals. One of these is the reform and correction of inmates. Imprisonment is not necessarily stigmatic, nor entirely foreboding for those who sell drugs. My students and I have been interviewing imprisoned drug dealers in California for the past year and a half, and found that imprisonment may bring a certain elevated "home boy" status, especially for gang youths for whom the prison can become an alternative neighborhood.\(^7\) Moreover, imprisonment often reinforces prisoners in their troublesome behavior. Already consigned to the margins of society, prisoners join gangs, use drugs, and make useful connections for buying and selling drugs. Perhaps the penitentiary was once a place for experiencing penance. However, today's correctional institutions, overcrowded with short term parole violators who have failed their court-mandated drug tests, often serve functions similar to those served by conventions for academics and business people—as an opportunity for "networking."\(^8\) A recent newspaper survey of prison drug use found that it has become a "major problem," and it cited "threats to prison order, violence

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55. *Id.*


58. *Id.*
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among inmates and corruption of guards and other employees” as among the most serious.59

President Bush has made the incarceration and execution of “drug kingpins” a focus of his war on drugs. But when we succeed in incarcerating drug dealers in prisons, we encounter what I call the Felix Mitchell Paradox, named in honor of the West Coast’s formerly most infamous drug distributor. In the mid-1980s, a federal strike force, with considerable assistance and dogged investigation by an Oakland Police vice squad, succeeded in convicting and imprisoning the East Bay’s three leading drug dealers. Among these was the legendary Felix Mitchell, who the prosecution charged was largely responsible for Oakland’s becoming a major drug dispensary, and who received a life sentence without parole in a federal district court for his drug related convictions.60 One would expect that confining three leading drug dealers to prison would reduce the violence and other crimes related to narcotics. The result, however, was a continued increase in narcotics crimes and the absence of any indication that Oakland residents perceived the community to be safer.61 It is very likely that, for the drug gangs, whatever deterrent value the criminal law had can be outweighed by the profits to be gained through expanding into the market vacuum created by the withdrawal of imprisoned suppliers.

Peter Reuter makes a similar observation about the relation between violence and market share as an explanation for the District of Columbia’s soaring homicide rate. He argues that when the supply of drug dealers exceeds the demand for drugs, “[o]ne obvious way to raise earnings is to eliminate the competition through violence.”62 The District of Columbia’s soaring homicide rate cannot be attributed to inactivity of the District’s police during the 1980s. Only 58 juveniles had been arrested for drug dealing offenses in 1981; by 1987 that figure had reached 1550.63 In 1981 adult arrests—usually men in their early twenties—totaled 408; by 1987 it was 5,297.64 Thus, we face the likelihood that increased criminal

60. See Covino, How the 69th Mob Maximized Earnings in East Oakland, CALIFORNIA, Nov. 1985, at 83.
63. Id.
64. Id.
sanctions, both against drug kingpins and lower level dealers, will only encourage other suppliers to enter the market or step up their activities through the violent elimination of competitors.

E. Ineffective and Inefficient Police Strategies

Mr. Bennett offers no evidence to support the effectiveness of the law enforcement initiatives he proposes. Several colleagues and I recently evaluated an initiative in Alameda County (Oakland), California which was similar to the one Mr. Bennett proposes. The sharp rise in drug selling and violence in Alameda County persuaded the legislature and the Governor to provide four million dollars from 1985 to 1987 to bolster and expand prosecution, probation, and the courts—precisely the expansion Mr. Bennett advocated. The study concluded that all of the law enforcement agencies carried out their mandate thoroughly and professionally, and that the intermediate goals of more prosecutions, more convictions, and more probation violation detections were met. That was the good news. The bad news was that it did not seem to matter. Crime, narcotics crime in particular, continued to increase. The study concluded that, contrary to popular myth, “[t]he rise in narcotics crime in Alameda County cannot be attributed to inefficient courts, prosecutors, probation officers or police.” More of even the best efforts, then, will probably be ineffective.

Of all the enforcement initiatives, the most satisfying—at least initially—are those which involve the community and local police. The Strategy argues that “[t]he first challenge facing our criminal justice system is to help reclaim neighborhoods that have been rendered unsafe by drugs.” In a recent National Institute of Justice publication, Mark Kleiman, a proponent of street-level drug enforcement, points to two special threats posed by street drug dealing: that children may become users, and that street dealing may become disruptive or violent. In the same publication, prosecutor Kevin Burke favors street-level enforcement based on a cost-benefit view, arguing that “when balanced against the environment of an open drug

65. Executive Summary, supra note 61, at 10.
66. Strategy, supra note 1, at 19.
market, a visible, active police presence is not a tremendous intrusion and therefore not a significant cost of a street-level operation." Thus, although results from initiatives such as New York City's Operation Pressure Point and other buy-bust programs are mixed, at least they are directly responsive to citizen calls for assistance. Of course, drug dealers may relocate their operations in response to police initiatives, but a police presence may be valuable in reducing fear of crime if not crime itself.

Some commentators, however, are less sanguine and emphasize the ineffectiveness of these street-level enforcement strategies. Even law enforcement officials are skeptical about the positive effects of crackdowns. Minneapolis police chief Anthony Bouza writes:

Focused, saturation street enforcement will clean up an area, but it is costly and inefficient. It robs other areas of their fair share of scarce resources and it does not eliminate the intractable problem of drug dealing, but merely displaces it. It also focuses, inefficiently, on the lowest level of the criminal chain and is sure to lead to abuses and repression, with sweeps and round-ups.

Thus, there is no general consensus as to how best to repair the damage drug dealing inflicts on local communities, nor is there agreement about what the costs are of an expanded police effort in this direction. Most importantly, there exists wide disagreement over how best to balance the respective costs and benefits, particularly when considering intangibles such as community morale and the costs of misallocating police resources.

IV. Defining the Drug Problem

If law enforcement initiatives in isolation are likely to fail, then we must look to other ways to combat the evils associated with drugs. In order to do so we must first define what the "drug problem" is. As stated earlier, the drug problem has two facets: first, crime associated with drug use and drug dealing; and second, addiction, which takes a terrible toll on the addict and on society. Furthermore, a

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69. See Kleiman, supra note 67, at 15-17.
70. Id.
72. Bouza, id. at 49.
drug control strategy should recognize that some drugs are more likely to cause crime and addiction than others; accordingly, we must further refine our conception of the drug problem by understanding why drugs concern us and determining the types of drugs we should be most worried about—in particular crack cocaine.

A. Violence, Unsafe Homes, and Uncivil Streets

The contemporary concern with drugs developed partly in conjunction with two related phenomena: the rise in street crime and violence and the relatively recent invention of the infamous distillate, crack cocaine. When cocaine was used in powder form by affluent users, such use was not associated with street crime and violence. But the advent of crack and the related rise in street crime and violence suggest that the top priority in the fight against drugs is for safe homes and civil streets, especially in poor neighborhoods where crack is prevalent. In Oakland, California, where I have been studying the drug phenomenon for a number of years, it is the relationship among drugs, crime, and street violence that has catapulted “drugs” to the top of the public concern charts. On the other hand, I have observed that drug use in the affluent neighboring Marin County, although doubtless of concern to families with drug users, has not sparked similar public outrage, likely because associated crime is not as prevalent as it is in Oakland.

Crime is associated with drugs in many ways. Street crimes may occur as addicts seek money to feed their habit; users may commit violent acts under the influence; and dealers regularly murder and maim in their “turf wars.” The costs to a community, in addition to the actual incidence of violent crimes, are great: the fear of violence prevents people from going out into the streets, reduces the availability of safe public space, and diminishes the sense of togetherness that people desire in a community.

If violent assault and personal injury are the chief problems, one of our major strategies ought to be control over the manufacture and sale of high-powered weapons. Far fewer lives were extinguished when youthful gangsters fought with fists, knives and zipguns. When police declare that a homicide is “drug-related,” they are implying that absent the involvement of drugs, the homicide would not have occurred. When a homicide is labelled as “drug-related” rather than “rifle-related,” the policy issue becomes clouded. As Lloyd Cutler recently noted:
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Guns increase the use of drugs and drugs increase the use of guns. No sensible drug control program can ignore the role of guns in drug-related crimes. Yet not one of Mr. Bennett's 50-odd recommendations for national drug control strategy relates to the control or detection of guns.73 If the drug problem is to be addressed from a comprehensive social perspective, we must effectively incorporate a complementary gun control program. Gun control alone, however, is not a panacea, and understanding the link between drugs and crime is crucial to developing a national drug policy.

What is the connection between crime and drugs? There is of course a tautological link. Violations of the drug laws are themselves crimes. But there is more than a tautological connection as a surprisingly large percentage of persons arrested for serious street crimes test positive for drugs. In New York and Chicago 78% of those arrested for burglary, larceny, and assault were found to have ingested illicit drugs in the previous 48 hours.74 Clearly, most street criminals use drugs. It does not follow, however, that most drug users commit street crimes. Such an inference would be illogical. It would be tantamount to inferring that most alcohol users are reckless drivers from a finding that most reckless drivers were under the influence of alcohol.

The correlation between drugs and criminality raises more questions than it answers. Do career street criminals commit crimes to satisfy an addiction? Do others commit crimes because they are under the influence of a powerful drug or are drugs a recreational activity popular among people who commit street crimes? Are the crimes people experience mostly committed by organized dealers and drug kingpins? The appropriate response to the drug problem must depend on who the perpetrators are (e.g., addicts, people under the influence, or dealers) and what their criminal motivations are (e.g., desperate need of cash to finance habit, lack of self-control, lack of alternative economic opportunity, or systematic elimination of competitor suppliers).

Few people would disagree that drug kingpins who run large, ruthless drug organizations deserve punishment. However, convicting and incarcerating drug users and teenage street dealers often

fails to accomplish the goals of the criminal justice system. For ex-
ample, in the case of young street dealers—the helpless pawns of
the drug trade—imprisonment makes little sense if we do not pro-
vide them a healthy environment after they are released in which
they can channel their energies into constructive jobs and legitimate
ways of making money. In the case of crimes committed largely to
finance addictions, long prison sentences make little sense because
addicts are not easily deterred. Furthermore, to the extent that ad-
diction limits freedom of choice, addicts may be less deserving of
the kind of punishment favored by advocates of retributive justice.
And finally, imprisonment would not serve any rehabilitative func-
tion for addicts in the absence of complementary medical and coun-
seling programs in the prison.

B. Addiction

Along with crime and violence, the other major facet of the drug
problem is addiction. Any “solution” to the nation’s drug problem
must grapple with the stark reality that the addict’s problem is not
self-contained; society at large is the victim of addiction, and we
should recognize that we must deal with the problem of addiction
out of a sense of urgency, not mere sympathy. As the Strategy notes,
people who need help to stop using drugs have the potential “not
only to destroy their own lives, but to endanger the lives of unborn
children, commit crimes against others, spread the deadly AIDS vi-
rus, and siphon productive energy from the American economy.”75
Our response to addiction, however, has been complicated by moral
baggage we carry with respect to addicts and addiction.

Most of us are ambivalent in our responses to addiction. So is the
U.S. Supreme Court, which has in the past split the finest of legal
hairs over the culpability of addicts. One of the leading cases is
Robinson v. California,76 in which the Supreme Court held unconsti-
tutional, under the cruel and unusual punishment clause of the eighth
amendment, a statute making it a criminal offense for a person to
“be addicted to the use of narcotics.”77 At the same time, the Court
made it clear that states are free to punish someone who sells,
purchases, or possesses narcotics.78 Courts are also concerned with

75. Strategy, supra note 1, at 35.
77. Id. at 665.
78. Id. at 664.
the voluntariness of crimes committed by addicts under the influence of drugs.\textsuperscript{79} We all understand that alcoholics will get drunk and that addicts will ingest drugs, and that subject to the influence of addiction, they may commit crimes to obtain drugs. However, there is disagreement regarding the degree to which addicts should be held morally culpable for such crimes. On the one hand, courts are hesitant to exculpate addicts on the ground that their conduct is "involuntary." On the other hand, some would regard addiction as a disease for which the addict is not, or is at most partly, responsible.\textsuperscript{80}

Thus, American society presently finds itself in a state of moral ambivalence with respect to addiction.\textsuperscript{81} This ambivalence must be resolved if we are to treat the drug problem as it should be treated—not primarily as a moral failing, but as a public health and social problem.

The main public health problem at present is crack cocaine addiction. Crack cocaine is purified, heat stable cocaine, suitable for smoking. "Absorbed across the pulmonary vascular bed," write the neurologists Dr. Lawrence I. Golbe and Dr. Michael D. Merkin, "it produces a more intense euphoria and more precipitous withdrawal than Cocaine HCL [powder cocaine] and is therefore more addictive. It has come into widespread use since 1984.\textsuperscript{82}

Before crack was invented, drug dealers "cut" cocaine hydrochloride with various substances to increase the volume of the expensive and profitable drug. Medically speaking, the diluted mixture—15 to 30 percent pure—proved relatively benign, since it produced moderate blood levels of cocaine.\textsuperscript{83}

Purified cocaine, known as "freebasing," has been around for a decade or more. But making it was complicated and dangerous.

\textsuperscript{79} See, e.g., United States v. Moore, 486 F.2d 1139, 1260 (D.C. Cir. 1973) (Bazelon, C.J., concurring in part and dissenting in part) (permitting jury to consider addiction as defense to criminal charges because of possibility of defendant's being under compulsion of addiction).

\textsuperscript{80} See, e.g., S. Peele, \textit{The Meaning of Addiction: Compulsive Experience and Its Interpretation} (1985); but see Fingarette, \textit{Addiction and Criminal Responsibility}, 84 \textit{Yale L.J.} 413 (1975) (strongly criticizing view that addicts are not fully responsible for their own condition).

\textsuperscript{81} See, e.g., United States v. Moore, 486 F.2d 1139, 1260 (D.C. Cir. 1973) (Bazelon, C.J., concurring in part and dissenting in part) (permitting jury to consider addiction as defense to criminal charges because of possibility of defendant’s being under compulsion of addiction).


People often mixed cocaine with ether to remove salt and carbon dioxide. Then they smoked the “base” in a water pipe.

Crack is made by mixing water, bicarbonate of soda and cocaine hydrochloride into a paste, dried in a microwave and smoked in a small pipette. The dried paste, or “rock,” makes a cracking sound when it burns.\(^8\)

Disappearing within 10 to 40 minutes, crack’s effects are intense and short-lived in contrast to the low dosage effects of nasally ingested cocaine, which can last up to an hour. The intense euphoric effects of crack are followed by crashing lows or intense depression. To avoid the lows, crack users tend to binge, and are quickly hooked. Eventually, they smoke to avoid depression, to feel normal.\(^8\)

The probability of being addicted to crack is high. According to Dr. Alex Stalcup of the Haight Ashbury Clinic in San Francisco, 15 percent of those who use alcohol and powder cocaine will become addicted; with crack, he estimates that 30-45% of all users become addicts.\(^8\) The unique effect of crack is that it is psychologically addicting. In an interview conducted in my studies, I have had one drug dealer describe crack use to me as being like “the best orgasm you’ll ever have” and thus something you would go back to again and again.

We need much more research into crack’s effects. An increase in paranoia has been identified, which often leads to violence. We do not know the extent of the correlation, nor do we know if crack’s users can lead productive lives. But we do know that crack is debilitating to many of its users, and is a major public health and social problem.

C. Definition of a “Drug”

Viewing the drug problem from a public health perspective, we must not confuse the definition of a drug with its legality. In other words, just because certain drugs, such as alcohol and tobacco, are legal, it does not mean that they impose no health hazards on individuals or costs to society. The metaphor of a “war on drugs” represents one pole of our ambivalence. We hate drugs, yet we tolerate and freely use legal drugs; thus, we are only prepared to declare war on illicit drugs. If “drugs” are immoral because they are attractive

\(^{84}\) Id.

\(^{85}\) Id.

\(^{86}\) Interview with Dr. Alex Stalcup (Jan. 1989).
but potentially dangerous substances, then the moralist is in the position of explaining why we already legalize the sale and promotion of two such potentially dangerous substances, alcohol and tobacco. Putting aside for the time being the question of whether it would make practical sense to legalize drugs other than alcohol and tobacco, what does it mean to achieve a moral consensus about drugs in a society where other potentially dangerous products are advertised, sold, and used?

Millions of Americans have tried both legal and illegal drugs. According to NIDA's 1985 National Survey on Drug Abuse, an estimated 61.9 million people over age 12 have used marijuana or hashish at least once in their lifetime, and about 18.2 million were current users in 1985.\footnote{NAT'L INST. ON DRUG ABUSE, NAT'L HOUSEHOLD SURVEY ON DRUG ABUSE: MAIN FINDINGS 1985, at 16 (Table 4) (1985).} Surely many of these users found it difficult to distinguish the harmful effects of illegal drugs from those of the legal variety. Moral arguments would have more force if, as a nation, we expressed consistent messages about health. As Robert Wadman, the Chief of Police of Omaha, one of a string of heartland American cities where drugs are a major problem, told a \textit{New York Times} interviewer: \textquoteleft{}We adults are staggering around with a vodka in one hand and a government-subsidized cigarette in the other, telling our kids they shouldn't use mind altering substances that are bad for their health. Now what's the lesson you would draw from that?	extquoteright{}\footnote{N.Y. Times, Oct. 2, 1989, at B10, col. 6.}

\section{D. Root Causes of the Drug Problem}

The \textquoteleft{}causes\textquoteright{} of drug use are many and varied.\footnote{The following discussion draws in part upon remarks by Dr. Richard Schottenfeld, Acting Co-Director, Substance Abuse Treatment Unit, APT Foundation, at a Yale Law School seminar entitled \textquoteleft{}Drugs, Crime, and Society\textquoteright{} (January 30, 1990).} They can be broken down into three general categories: medical, psychological, and socioeconomic. The medical category encompasses the interaction of the pharmacological properties of the drugs with the genetic and physiological endowments of individuals.

The psychological category relates psychological makeup of the individual with predisposition to drug use. The self-medicating hypothesis theorizes that people take drugs to relieve anxiety, to restrain aggressive impulses, or in some way to counteract some part of their psychological makeup—which in turn derives from both nature and nurture.
Socioeconomic factors pertaining to drug use include lack of opportunity; social despair and anomie resulting in escapism; peer pressure; the actual availability of drugs; the perception, gleaned from television, doctors, parents, and others, that there is a chemical cure for almost every problem; and generally the pressure of existence. American G.I. drug use in Vietnam illustrates the power of socioeconomic forces: about 43% of G.I.s tried drugs, and almost half of those who did became addicted. Elements of peer pressure, escapism, the pressure of existence, and availability were all present. By the time the G.I.s returned to America, only 14% of them were addicted, and almost all of those who were cured had cured themselves, illustrating the contextual nature of drug abuse.

The pharmacological and genetic "causes" of drug use hold true cross-culturally. The issue, then, is why in this culture, and also in particular subcultures, drug use is so problematic. The Strategy's main answer is a breakdown in morality and resulting poor choices. My answer stresses instead socioeconomic factors.

1. Lack of "moral compass". America's moral confusion concerning drugs is ignored in the Strategy. It assumes the primacy of morality and the legitimacy of a single moral paradigm for viewing users of drugs and considering the solutions to the drug problem. In so doing it fails to address key questions: Why do some communities produce drug dealers, while others do not? What social, economic, and psychological conditions are associated with differing levels of drug selling and use?

The Strategy ultimately fails as a policy prescription because it fails to take into account the underlying roots of the drug problem. In one of its least punitive sections, the Strategy observes that "[a] young person's first line of defense against drugs is his own moral compass, a product of values internalized from religion and from the family." That observation takes for granted certain features of society—religion, the traditional nuclear family, economic opportunity, abundance, racial harmony, non-segregation—which render the focus on individual choice and morality reasonable. But these conditions of stability simply do not exist in all strata of society.

91. Id. at x.
92. Strategy, supra note 1, at 48.
2. Disadvantage and lack of economic opportunity. A disproportionate number of drug users come from the poor and disadvantaged underclass, who appear to have very little to lose by turning to drugs and little reason to control drug use due to their dissatisfaction with life. It is difficult for them to just say no, not because they are morally deficient or lack good judgment, but because structural conditions in our society provide them few alternatives.

Crack is a psychologically, but not a physiologically, addicting drug. It is particularly useful in assisting a user to escape from reality. One imprisoned drug dealer, who used to freebase, graphically described the attractions of crack in a study my students and I conducted during the summer of 1988:

It’s not addicting like your body craves it. You’re not going to get sick and shit by not smoking. Only thing that craves crack is your mind. It’s like an illusion. You hit the pipe, you are whatever you want to be. . . . You’re into basketball, you are Magic Johnson. Say you’re into music and you’re basing. You feel like you are James Brown or Stevie Wonder or Michael Jackson. It makes you feel like what you really want to be.

If the above description is accurate, it would appear that users ingest drugs, particularly crack cocaine, for reasons other than moral imperfection—crack makes one feel good, takes one out of life circumstances, and, however fleetingly, puts one’s mind in a place that fulfills fantasies. People thus use crack to overcome feelings of pessimism, hopelessness, low self-esteem, and despair. These feelings can exist in any social group, but they are heightened by poverty, disadvantage, neglect, and joblessness. One may speculate that the more satisfied and engaged people are with their lives, the less likely they are to use drugs like crack cocaine.

If feelings of powerlessness and low self-esteem can be overcome by using crack, our real policy focus should be on mitigating the

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93. Rosenbaum, Just Say What: An Alternative View on Solving America's Drug Problem, Nat'l Council on Crime and Delinq. Rep. 9 (1989). However, the vast majority of the poor are not drug users. Approximately 33,000,000 Americans live below the poverty line, while NIDA reports 800,000 weekly users of cocaine and nearly 500,000 of crack. Nor is illegal drug use confined to blacks and Hispanics. In absolute terms most heavy users—four out of five—are white. Id. This suggests that people who are mostly affected by drugs are not confined to a single racial or social group. A profile of the “average” crack user is difficult to construct. Most samples of crack users are culled from prisons and therapeutic programs, and those either in prison or in treatment may not be representative of crack users generally. Lieutenant Gary E. Rogness of the Narcotics Division of the Los Angeles Police Department told me in an interview in January 1990 that the sellers and buyers of crack in the San Fernando Valley in Los Angeles are almost all white, generally from the working and middle classes, leading him to note that he did not know who a “normal” crack user is.

94. Social Structure, supra note 34, at 15.
conditions which cause these feelings in the first place. Government should focus on remedying such ills as lack of economic opportunity and racism. Without solutions to these most basic problems, drugs will not go away—any more than taking aspirin will end backaches. Although we probably never will be able to eliminate drug use, we still need an approach to fight both symptoms and cause—i.e., both drugs and the conditions which induce people to use them.

In our interviews with street drug dealers, we learned that successful crack dealers typically do not use crack, although they have the most access to it. One California dealer explained:

I never use [crack] cocaine; it's not real when they say that a person that sells ends up using his drugs; that's not true, he's like an outcast . . . you get beat up, dogged out; nobody respects you anymore, it turns you scandalous; the shit will make you steal from your mama.95

Terry Williams, in his impressive ethnographic account of teenage drug dealers in New York City, makes a similar observation. Successful crack dealers virtually all use marijuana, and some use powder cocaine, but most consider the use of crack cocaine a business impediment.96

In sum, although crack cocaine is surely a compelling drug, those who are addicted to hard cash are able to forgo its pleasures. Perhaps no point better illustrates the fact that America would be better served by a strategy concerned less with morality and more with the relationship between drug dealing and economic opportunity.

V. A New Approach

Ultimately, the Strategy is a political document, and no politician currently can be criticized for a tough attitude on drugs. If anything, the President's and Mr. Bennett's political opponents have criticized them for barking louder than they bite. Nonetheless, the Strategy embraces law enforcement and stern proscription as the best means to achieve the goal of a "drug free America." In doing so, it has either failed to recognize or ignored the fundamental elements of the drug problem. What is needed, instead, is an approach that focuses on the public health and social dimensions of the drug problem. Before elaborating on this approach, it is useful to consider

95. Id. at 16.
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proposals for legalization—proposals which go even further in rejecting the Strategy's reliance on law enforcement—in order to place the public health/social problem approach in perspective.

A. Evaluating Legalization

Legalization has often been proposed as an alternative to the tightening of law enforcement.\(^97\) In evaluating the legalization alternative, one must consider the repercussions of such an approach to the drug problem. Among other things, one must examine whether all drugs or only some would be legalized, what the benefits and costs of legalization would be and to whom, and whether legalization can be reconciled with a positive moral message.

Several legalization models illustrate the range of proposals on the table. Under the least restrictive, free-market model, all presently illegal psychoactive drugs would be readily available to consumers. This model would treat such substances as heroin or cocaine as we treat aspirin and other over-the-counter drugs. Supermarkets could sell, and anyone could purchase, unlimited supplies. Considerable benefits would flow from such an approach. Because all drugs would be legal under this model, one could reasonably speculate that it would effectively eliminate the street corner drug market. At one stroke, the free-market model could deal a serious blow to smuggling, organized drug gangs, street sales, street violence, and, since drug prices would presumably be reduced, most crime motivated to purchase drugs.

To my knowledge, no major legalization advocate proposes a free-market model. Alternative legalization models imply much more formal control. Drugs might be regulated in the same ways that the content and sale of alcoholic beverages, cigarettes, or prescription drugs are regulated. Administrators might try to monitor purity, potency, and/or the age of buyers.

Essentially there are three models for regulated legalization. The first is the paradigm for cigarettes, which ostensibly cannot be bought by minors but which are readily available in machines and stores. The second is the paradigm for alcohol, which is available only in stores and bars, and where the sale to minors is more heavily policed. The third is the paradigm for prescription drugs, which can

97. The most prominent and knowledgeable proponent of legalization is Ethan Nadelmann of Princeton University. See Nadelmann, *The Case for Legalization*, PUB. INTEREST, Summer 1988, at 3. For an intelligent argument against legalization, that distinguishes between marijuana and other drugs, see Wilson, *Against the Legalization of Drugs*, COMMENTARY, February 1990, at 21.
only be received after a doctor or other accredited official prescribes them, and then only in prescribed amounts. Methadone treatments for heroin addiction fall under this general category, as addicts must go to clinics to receive their prescribed dose.\textsuperscript{98}

Crack is both highly addictive and can produce violent reactions potentially harmful to others. As a result, the third, most restrictive model may be most appropriate for crack. It might be less appropriate for marijuana and other less addictive and harmful drugs.

The more controls the government imposes, however, the more incentives there are for illegal markets. For example, if we were to legalize the sale of powder cocaine while prohibiting the sale and use of crack cocaine, we would create a black market for crack that undermines the very purpose of the regulated legalization model. Thus, any regulation would reduce some of the benefits of legalization.

Legalization advocates assume that benefits would outweigh costs, without explaining how costs are measured and who will bear them. Would costs be equitably allocated, or would some communities be "taxed" more than others? Moreover, legalization proponents must address whether legalization would increase the health costs to society. To be persuasive, legalization advocates will have to convince skeptics of a number of propositions. The first among them is that wider availability of drugs will neither trigger significantly more drug use nor stimulate more intensive use by current users.

One can only speculate about what would really happen if drugs were legalized. One popular theory is that drugs are presently so easily available that anyone who wants to use them already does and would not be interested in using significantly larger amounts. Mr. Bennett affirms that perception. He writes, "Finally, undeniably, the fact remains that here in the United States, in every State—in our cities, in our suburbs, in our rural communities—drugs are potent, drugs are cheap, and drugs are available to almost anyone who wants them."\textsuperscript{99} If drugs are already cheap and available to everyone, why not legalize?

In actuality, every part of the Bennett assertion is an overstatement. Some drugs are potent, others are less so; drugs vary in

\textsuperscript{98} Nadelmann proposes a strategy in which "government makes most of the substances that are now banned legally available to competent adults, [and] exercises strong regulatory powers over all large-scale production and sale of drugs. . . ." \textit{Id.} at 5-6.

\textsuperscript{99} \textit{Strategy}, \textit{supra} note 1, at 2.
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price, so that marijuana is presently more expensive on the street than crack; and drugs still are not as available as they would be if they were legalized. Indeed, in arguing against legalization, Mr. Bennett correctly observes that there are deterrent costs and risks to using illegal drugs—purchase price, the time it takes to search them out, unreliable quality of street drugs, and legal sanction—which would be greatly mitigated if drugs were legalized.100 But when Bennett talks about legalizing “drugs,” he fails to distinguish among the costs and risks associated with different drugs. He offers an economic analysis of the pricing structure of crack cocaine101 that may not apply to other drugs, most especially marijuana.

One could argue that legalization would be least likely to increase drug use by affluent and educated drug users. There are of course plenty of them, but their drugs of choice are mostly alcohol, cigarettes, marijuana, and nasal cocaine. Fewer of them are choosing to use any drugs, and when they do, they use drugs more moderately. An affluent, educated population may be less affected by lower price and greater availability than other groups in society.102

However, since crack, heroin, and phencyclidine (PCP) remain inner-city favorites, those who speak on behalf of this constituency fear the actual and symbolic consequences of legalizing drugs. They are concerned that legalization will generate a sharp rise in drug use among the truly disadvantaged, especially among teenagers who face difficult lives and bleak futures. Since these teenagers are not saying “no” to expensive illegal drugs, the argument proceeds, why should they say “no” to less expensive legal pharmaceuticals? On the other hand, crack cocaine and PCP are already easily available and fairly cheap in the inner city, though not as easily available as they would be under a legalization regime. Therefore, it is difficult to predict how legalization would affect the incidence, quantity, and frequency of use among inner-city youngsters should legalization occur.

If we thought that drug use would only be slightly affected by legalization, that option would be more attractive. If we thought that

100. Id. at 6.
101. Id. at 6-7.
102. There is an important caveat to this point, however. The use of crack is spreading to middle-class suburbs and to some of the affluent. Dr. Jeffrey Rosecan, director of the Cocaine Abuse Treatment Program at Manhattan’s Columbia Presbyterian Medical Center, sketches a profile of the affluent crack user as “a man in his 30s or 40s, single or divorced, with a high-pressure job, little inner peace and a history of moderate drug use and heavy drinking.” TIME, Nov. 6, 1989, at 97-98.
legalization would produce a large rise in use and subsequent addiction, the benefits of legalization would be outweighed by the costs. We need to know much more about the motivations of drug users. I suspect that few readers of the Yale Law & Policy Review would experiment with heroin or crack, even if these drugs were made legal. We simply do not know what percentage of any identifiable group—e.g., industrial workers, investment bankers, inner-city high school dropouts—would initiate crack use because such drugs would be legal and cheap. But as John Kaplan prudently observed in opposing cocaine legalization: "If we legalize cocaine now, how long should we wait before deciding whether we made a mistake? And if we decided that we had, how would we go about recriminalizing the drug?"\textsuperscript{103}

While legalization advocates may have overstated their case, the Drug Czar has underestimated the benefits of legalization. His attack on legalization counts among its possible costs: (i) a rise in crime as addicts seek money to buy drugs, (ii) a rise in violence associated with cocaine paranoia, and (iii) a rise in the demand for the already overburdened treatment facilities.\textsuperscript{104} As to the first cost, some addicts already commit crime to buy drugs. If drugs were legal and cheaper, addicts would conceivably have less need for cash and thus less incentive to commit crime. The second and third costs assume that there would be a far greater number of cocaine addicts following legalization, which may or may not be true. More importantly, although the argument that legalization increases the costs associated with drugs may apply to crack cocaine addiction, it clearly does not apply to marijuana or heroin. A cheap supply of heroin should reduce crime committed by heroin addicts, and nobody today seriously claims an association between marijuana use and crime, particularly violent crime.

Another major flaw in Mr. Bennett's argument against legalization is its failure to address legalization's potential for curbing inner-city violent crimes associated with turf battles, and conflicts among drug-running organizations and gangs, which are for the most part an inner-city phenomenon. Advocates of legalization make a plausible prediction of a sharp reduction in crime and violence as illegal drug organizations no longer fight over territory or enforce illegal contracts with violence or the threat of violence. Thus, legalization could dramatically heighten the safety of the inner city.

\textsuperscript{103} Kaplan, Taking Drugs Seriously, PUB. INTEREST, Summer 1988, at 42.
\textsuperscript{104} STRATEGY, supra note 1, at 6-7.
Not only does the *Strategy* overestimate the total societal costs of legalization, it completely ignores the many significant costs associated with the alternative—*i.e.*, increased law enforcement. Perhaps most importantly, Mr. Bennett's assessment of legalization proposals does not factor in the unprecedented expansion of law enforcement as a cost either to our sensibilities or to our civil liberties. It also fails to include as a cost the increasing involvement of inner-city youngsters as criminals in the drug trade, or their predictably progressive contribution to the population of our jails and prisons as penalties for drug selling and use rise. Lastly, the *Strategy* ignores the cost to society of having an increasingly larger population of former felons who have been hardened by the tough prison regimes advocated in the *Strategy*.

Legalization, then, is neither a panacea nor a crackpot idea. Were it to be implemented, legalization should not give symbolic support to drug use. Legalization of a "vice" is often equated with approval, or even promotion, of a formally forbidden activity. Our society allows advertising of alcohol and cigarettes, even as medical authorities decry alcohol abuse and cigarette use. When governments have legalized gambling—lotteries, casinos, and off track betting—they have also condoned and shamelessly promoted gambling. However, legalization need not imply approval. When the British legalized casinos in 1968 their purpose was to control organized crime. Not only do they forgo promotion of their London casinos, they do not permit the casino to advertise at all—not even on matchbooks or advertisement in the telephone directory.

Similarly, if drugs are to be legalized, advocates must ensure that the purpose will not be to pump money into state treasuries, but rather to control a major social and public health problem. It will not be enough simply to advocate legalization on the basis of a cost-benefit calculation. To be acceptable, legalization will need to be grounded in a larger value-promoting purpose—to reduce crime, to enhance public health and safety, and to invigorate a sense of community. To serve this purpose, legalization will need to be part of a comprehensive package, including social programs for the truly disadvantaged, strict licensing of sellers, increased enforcement against those who sell to the young (even at the risk of losing some of legalization's benefits), extensive anti-drug education programs and advertising, and adequate resources for rehabilitation of users.

105. See supra notes 28-72 and accompanying text.
Proposals for legalization that are decontextualized, that fail to advocate a powerful anti-poverty, anti-drug strategy will likely be rejected—and should be.

At best, however, legalization of some drugs (particularly marijuana) or decriminalization will solve some law enforcement problems which arise out of drug dealing; it will not, however, solve the problem of crack addiction and the increasing problem of crack babies. Nor will it stop addicts who commit crimes because they are on drugs, to the extent that drugs undermine self-control and inhibition. Furthermore, given the necessity of regulating drugs like crack cocaine, it may be inevitable that some form of crime will flourish even if the drug is legalized. Legalization may undercut drug dealing and provide us with somewhat safer streets, but it does not begin to address the monumental problem of addiction and the health costs to society.

B. A Public Health/Social Problem Approach

The "contextualized" view of legalization suggests a possible middle ground between the "unprecedented" expansion of prisons advocated by the Bush administration, and legalization. This approach, while not endorsing legalization, addresses the drug problem primarily as a public health and social problems (PHSP) issue rather than as a law enforcement responsibility, with our resources directed mainly toward the former. It attempts to address the problem of addiction as well as violence.

Despite all of its rhetoric about education and treatment, the Strategy considers a PHSP approach to be the equivalent of legalization. It fails qualitatively to distinguish a "shift of emphasis away from drug enforcement and toward, instead, treatment for addicts and counseling for students," from the proposals for legalization, stating that the latter is a starker and more extreme version of the former. A PHSP approach, however, is both practically and symbolically on a different plane from legalization, just as cutting the military budget by 20 percent is different from pacifism. The former

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107. Support for a PHSP approach cuts across partisan lines. California Chief Justice Malcolm Lucas, a Republican appointee, recently endorsed greater emphasis on "education, treatment, early intervention and research into the root causes of this scourge." He argued that "in dealing with the drug crisis, courts cannot be viewed as the first resort—they must be among the last." He also urged greater realism as to what the court system could accomplish, noting that the state court system was swamped by the near tripling of drug related arrests between 1979 and 1988, to more than 158,000 per year. San Francisco Chron., February 13, 1990, at A2, col. 1.

108. STRATEGY, supra note 1, at 6.
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involves a difference in degree from the status quo; the latter, a difference in kind.

In contrast to a policy grounded mainly in enforcement, with increased support for military intervention, interdiction, and expansion of prisons, a PHSP view stresses counseling, economic opportunity, therapy, education, a consistent attitude toward health values, and narrowly-targeted sanctions. The PHSP approach does not necessarily suggest that we greatly reduce law enforcement, but only that we do not expand the criminal justice system in an "unprecedented" way.

A comprehensive examination of the optimal level of sanctions and initiatives in counseling, economic opportunity, therapy, education, and health is beyond the scope of this Article, but there are some general directions we should take under a PHSP approach.

1. Treatment and counseling. No recognized antidote to cocaine addiction is presently available. However, there can be successful treatment. My interviews with therapists working with addicts suggest that success varies with social class. Therapists at the Haight Ashbury Free Clinic in San Francisco observed that the more the addict can count on social sustenance—i.e., friends, family, job, therapy group—the more likely will abstinence be achieved. Thus, while cocaine and crack addiction may be fairly widespread, the results of treatment will likely vary according to social class and family structure.

The "truly disadvantaged" are less likely to enjoy this kind of neighborhood and familial underpinning. Addicts from disadvantaged backgrounds ultimately experience symptoms comparable to those of clinical depression—anhedonia, a paradoxical craving for everything despite an incapacity to take pleasure in anything, such as food, sex, or the World Series. They think only about obtaining the drug. They live in a world—often a housing project—which continually cues their craving because drugs are being used and sold all around them. Furthermore, treatment is often unavailable, as there are no Betty Ford clinics for the desperately poor. Therefore, for treatment to succeed in the inner city, it must be applied with a sensitivity to the reality that the poor live in an environment where the benefits of treatment can easily be undermined.

It would, however, be naive to believe that treatment can work under wholly voluntary arrangements. Addicts often need to be confronted by the fact that they have a drug problem, and this may necessitate some degree of coercion. Thus, some have suggested that “frequent drug testing, backed up by the revocation of parole or of probation for those who fail, may help produce . . . that willingness to confront the fact of addiction that is the prerequisite of successful treatment.” While this may sometimes be an effective way to identify the problematic addicts who need the most help, we must follow up with the substantive aspects of treatment and not ignore those addicts once they return to prison after failing drug tests. I would recommend an increased emphasis on, and more federal funding for, drug treatment programs in prisons, including initiatives for skill training to provide those who are rehabilitated with enhanced job opportunities after their release. A rehabilitated addict equipped with job skills will be less likely to fall back into the despair that led her to drug use in the first place.

2. Education: promoting health values. A PHSP approach implies that we provide accurate, not exaggerated, drug information to the young. The purpose of education about drugs should be to instill health values. We made the error in the 1960s of overstating the dangers of marijuana. Instead of discouraging use, the absurd portrayals overstating the lures of marijuana encouraged the widespread and erroneous inference that marijuana posed no dangers. Similar erroneous inferences were made about powder cocaine in the 1970s. Health messages are often conveyed to the young in terms of a false polarity. Drugs are presented as being either harmless or instantly addictive, when in fact drug effects are complicated by various factors, such as the quality of the drug, its dosage, the means of ingestion, the context in which it is used, and the biological and psychological circumstances of the user. Any health message must take these complicating factors into account.

Abstinence messages regarding drugs are especially tricky and can backfire. Research in the 1950s on alcohol abuse found that individuals who had been reared in Protestant sects or non-religious backgrounds that preached total abstinence reported a high rate of alcohol problems. Such persons invariably initiated drinking outside the ambit of a moral community, in a bar or behind a barn.


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They grew up learning that to drink is to drink hedonistically and often excessively. One drinks to get drunk. Thus, while “just say no” is a positive message if it works, it may actually increase drug abuse when it does not.

In contrast to a call for legalization, a PHSP approach can incorporate a moral message every bit as compelling as Mr. Bennett’s punitive one. It does not advocate drugs on demand but rather a reordering of priorities. These include community regeneration and a massive investment in anti-drug advertising, severe limits on alcohol and cigarette promotion, and required educational programs in schools and the workplace. It also implies a consistent, non-stimulating and honest approach to understanding the complexity of the effects of substances which alter our perceptions and feelings and which are subject to abuse. Just as there are significant links between public health and the integrity of the “infrastructure”—e.g., sewage systems, water supply, bridge construction—there are important connections between crack cocaine selling and addiction on the one hand and poverty and inequality on the other.

3. Social programs. The policy vision presented by the Strategy which comes under the heading of “Community Action” reveals rhetoric that is couched in terms of communities “fight[ing] back.” One way to combat the drug problem, as the Strategy proposes, is religion. In this sense the Strategy is consistent in characterizing drug use as a “moral” rather than a social problem. If drug use is a moral problem it is presumably sufficient to rely on volunteers who will “work in drug treatment clinics, schools, hospitals, and community and social service organizations.” Moreover, if moral imperfection is the fundamental cause of drug use and dealing, a drug strategy does not need to consider social and economic conditions as causes.

However, as I have argued, social and economic conditions are causes of both drug use and drug dealing. All classes are afflicted by the ills of modern society and the breakdown in traditional structures of authority; the economically disadvantaged, however, often face more travails. Economic and social conditions such as poverty,

114. Id. at 468.
115. Strategy, supra note 1, at 53.
116. See id.
117. Id. at 54.
discrimination, neglect, and joblessness intensify feelings of pessimism, hopelessness, low esteem, and despair which are felt by people from all walks of life and which can motivate drug use, particularly crack cocaine use.

Lack of opportunity also explains, at least in part, drug dealing. Any comprehensive drug strategy should focus on, rather than ignore, the classic connection between delinquency on the one hand and the discrepancy between aspiration and actual opportunity on the other. \(^ {118}\) Although the motivation for selling drugs is sometimes to feed a habit, it is my observation that dealers sell drugs mostly to succeed economically. Successful crack dealers do not appear to ingest crack. My recent study of drug dealers in California suggests that they are rationally materialistic. \(^ {119}\) To the dealers, drug selling represents a singular economic opportunity in an environment where they perceived few, if any, others. Terry Williams's New York study found that in addition to the immediate rewards of money and drugs, cocaine offered the New York City Dominican "kids" the opportunity "to show family and friends that they can succeed at something." \(^ {120}\) And Philippe Bourgeois, who studied crack dealers in New York's Spanish Harlem, challenges the assertion of culture-of-poverty theorists that the poor are socialized out of the mainstream and have different values. He concludes that:

> On the contrary, ambitious, energetic, inner-city youths are attracted to the underground economy precisely because they believe in the rags-to-riches American dream. . . . Without stretching the point too much, they can be seen in conventional terms as rugged individualists on an unpredictable frontier where fortune, fame and destruction are all just around the corner. \(^ {121}\)

Not all inner city youth are ambitious, of course, and some fall into drug dealing to pay for their habit, but their wasted lives, like those who only use drugs, are products of the lack of opportunity.

In the absence of legalization, can society possibly offer economic opportunities to compete with the economic benefits of the drug trade? Any economic opportunity program would have to distinguish between upper level, multiple-kilo dealers, and youngsters who deal in the streets. A recent newspaper report offers a depressing picture of the lower rungs of the crack business, describing it as

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118. For a theory of the connection between delinquency and the aspiration-opportunity discrepancy, see R. CLOWARD & L. OHLIN, DELINQUENCY AND OPPORTUNITY 108-43 (1960).
120. T. WILLIAMS, supra note 96 at 11.
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a "modern, brutalized version of a 19th century sweatshop." The report continues:

Despite the popular notion that crack sellers all drive Mercedes-Benzes, wear gold jewelry and get rich quick, most of the people in the business work round the clock, six to seven days a week, for low real wages in an atmosphere of physical threat and control. Their pay is often docked if they arrive late; they may be shot or maimed if they are even perceived as trying to cheat their employers, and many fall into such debt to their bosses that they have to go into hiding.

The drug trade has a downside recognized by many of those who engage in it. While it is advertised as attractive and remunerative, selling drugs is also risky, violent and dangerous. The downside is clearly most recognizable to those who are at its margins, to the kids who sell on the street and who move in and out of the drug trade, rather than to higher ups who are well connected and tightly committed.

There are a number of ways to begin offering inner city youth opportunity and hope. Several programs aimed at creating better opportunities for youngsters in disadvantaged communities involve sponsors who promise to pay for the college education of members of entire elementary school classes. In some of these programs the sponsor undertakes to devote personal time and to fund facilities and services which provide a wide range of academic, cultural, social, and recreational experiences to keep the class together from elementary school through college. These programs are careful in not selecting only a few especially talented students as the beneficiaries; instead, they emphasize that the opportunity to succeed

123. Id.
124. But even those higher up are not entirely content. As one higher-level dealer observed to me in an interview:

About selling dope, it’s money, you have a good life. But the worst thing about it is buying it. When you sitting up there in a little motel room and everybody got guns, holding guns, and counting money, you sweatin’. No windows open—nothin’ can be open ’cause you got all that dope. And you’re talkin’ about price. . . . You don’t want to look weak and he don’t want to look weak. All that tension. If I could ever find a way where I didn’t have to buy nothing, just trust somebody with all that money, I’d never buy again.

Social Structure, supra note 34, at 18.
125. The first such program was initiated by Eugene Lang’s dramatic, spontaneous offer to provide a college education for the sixty-one students of the sixth-grade graduating class of 1981 at Public School 121 in Harlem, New York City.
should be equally provided to similarly situated kids. Such an approach tends to galvanize an entire community—just the kind of uplifting experience needed in neighborhoods demoralized by drugs.

Another way to provide economic opportunity might be to develop an industrial program which subsidizes the rebuilding of the inner cities and pays youngsters to work in these programs. Although it is true that these programs could never pay enough to compete with the drug profits of the highest level dealers, they provide economic incentives, without the life-threatening risks, to lower level players of the trade.

4. Sanctions. The effectiveness of sanctions in addressing health and social problems is mixed. There is now developing a revisionist view of the Volstead Act which points out, quite correctly, that although the Prohibition was a law enforcement disaster, it was a public health success. The incidence of alcohol connected illness, such as cirrhosis of the liver, declined appreciably. Cirrhosis death rates for men were 29.5 per 100,000 in 1911 and 10.7 in 1929. Arrests for public drunkenness and disorderly conduct also declined, while violent crime did not rise. If one were to recalculate the costs and benefits of Prohibition by taking into account the public health benefits, a better case could be made for it.

However, the benefits of proscription should be counterbalanced by choice values. Should everyone in the society be legally required to abstain from drug use because some proportion of users abuse the substance? If the law enforcement costs of prohibiting drugs, as well as the burdens to choice values, outweigh the public health benefits, the answer is clearly no. If our attitudes toward alcohol and cigarettes are tolerant, as evidenced by their advertising, promotion, and relatively low taxation, it seems nonsensical to embrace a rigid prohibition model for substances that are no more addictive or dangerous, without regard to whether the total costs of that prohibition outweigh the public health benefits.

Sanctions are useful when they serve to deter and send a message that society will not condone certain conduct. However, in applying sanctions against drugs, we must ask under what circumstances they would be most effective and to whom they should apply. I suggest

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128. Id.
129. Id.
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that legal sanctions should be targeted primarily toward drug traffickers and organized drug organizations instead of the user population and young street dealers. Without proper treatment, addicts will not be deterred by repeated incarceration, and it hardly makes sense to punish non-addicted users when their behavior does not pose a threat to society. Similarly, criminal sanctions imposed on young street dealers may have no deterrent or rehabilitative effect. I have argued that locking up youths may ironically encourage them to “network” with other delinquents and reinforce their troublesome behavior. Young kids need proper education and opportunity; criminal sanctions provide neither.

VI. Conclusion

How should we address the drug conundrum? Exhortations aimed at drug users or sellers, whether by religious figures or moralistic drug czars, scarcely seems promising. Can Mr. Bennett really believe that those who sell drugs will be persuaded by his message? He is far too intelligent to expect that. Rather, it is more likely that he anticipates that, by drafting his report in these terms, key policymakers will be persuaded to support his policy recommendations, the centerpiece of which is his emphasis on an unprecedented expansion of law enforcement, interdiction, and military intervention.

Mr. Bennett sees the reclamation of neighborhoods as a “criminal justice” challenge; I see it as a social problem and public health challenge. A more promising national drug strategy should reflect a deeper understanding of the drug problem and its underlying causes. It would recognize, and be responsive to, the connection between social disadvantage and street drug selling, the price we are paying for years of neglect of poor communities, and to the serious limits and costs of an “unprecedented” expansion of law enforcement. It would use sanctions as a support to the social and economic initiatives, not as the centerpiece for an anti-drug strategy.

Finally, although the Strategy concedes that there are no quick fixes to the drug problem, its basic strategic approach is questionable. It rests on the sound idea that each segment of the plan—i.e., military intervention, interdiction, unprecedented enlargement of law enforcement, casual user sanctions, and treatment of addiction—will reinforce each other. But will they? Or will it result mainly in a directionless expansion of law enforcement apparatus

130. See supra notes 57-58 and accompanying text.
and resources, with only a moderate rise in what drug-ridden communities really need: treatment programs, education, and attention to the underlying causes of drug selling and addiction? The measures suggested by the *Strategy* presently are politically attractive, but in the long run their efficacy will be tested as we try to consign "unprecedented" numbers of our young citizens to the prisons that Mr. Bennett is urging us to build.