unequal under law
RACE IN THE WAR ON DRUGS
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Unequal under the Law: Race in the War on Drugs

Acknowledgments and Dedication

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It is no coincidence that the movement to prohibit alcohol overlapped the movement to control opium, marijuana, and cocaine. The pervasive Progressive ideology of the time exhibited an almost unbounded passion for social and individual reform. The Progressive-era mix—of optimistic, scientifically oriented reformism; evangelical fervor; and primal, racialized fears of a growing underclass—were all at work in the movement to control narcotics and other mind-altering drugs. Reformers faced less opposition than they had with alcohol, which has a long pedigree in American culture and powerful support in legitimate business. While narcotics were accepted and valued by middle-class Americans as medicines, they were not broadly accepted as recreational drugs. Escapist drug taking seemed dangerous to a society that had become obsessed with hard work and social improvement. Medical opinion also shifted, as it had with alcohol in an earlier generation, to focus more on the dangers of an unregulated drug industry. Doctors were pushed in this direction by legislation that made them vulnerable to arrest for maintaining addicts, even those they had created with their own prescriptions.

The nation’s experience with Prohibition suggests that drugs are criminalized in two steps. First, the substance must be reconceptualized as dangerous, debilitating, and of no legitimate value. Second, the user must be reconfigured as socially marginal and ignorant, or contemptuous, of community standards and moral decency—the kind who responds only to the stern intervention of the criminal law. The reconceptualization of recreational drug use, from a personal matter to a cause for social alarm, can occur as part of a broad-based movement over time, as exemplified by Prohibition, or in a more centralized way, through the active efforts of a few moral entrepreneurs, as happened with drugs considered illicit today. In both cases,
change agents play off of society's prevailing racial and ethnic prejudices, including attitudes hostile to immigrants and foreigners. These prejudices, and a characteristically American combination of fear and fascination with intoxicating substances, reinforce each other in a dialectical way, each giving force to the other.

This chapter brings the drug war to the modern era, highlighting the racial/ethnic dimension of the episodic outbursts against particular drugs that occurred along the way. Contemporary readers may be surprised by the virulence and pervasiveness of the racial scapegoating in mainstream, mass-circulation publications and government documents in the period that began in the 1870s with the end of Reconstruction and extended until the civil rights revolution of the 1960s. The anti-drug rhetoric of this era rests on the taken-for-granted conviction that whites from England and western Europe were more advanced in their social, and perhaps even physical, evolution than other races and ethnic groups. This preoccupation with whiteness was unself-conscious and unapologetic, reflecting what Charles Mills (1997) describes as a racial contract that gives whites, in exchange for their privileges, a special burden to maintain order and to help others achieve higher levels of development.

There is a global dimension to this racial contract. White Americans must use their laws and institutions to steer the rest of the world in a more abstemious direction, by force if necessary. Drug-criminalization advocates built on this foundation. As Kevin Ryan notes, "American drug problem 'entrepreneurs' have regularly asserted that much of the problem lies outside our borders, in those other areas of the world (always less developed nations that have been viewed as 'less civilized') where these 'evil' substances are cultivated, manufactured, and shipped into the United States" (1998, 142). Sometimes awkward facts—for example, the tradition of opium use among northern Europeans—must be ignored to maintain the fiction of white innocence about drug use (Ryan 1998).

The racial signals could be confusing, however. In much of the period considered in this chapter, the federal government was simultaneously courting foreign cooperation to control drugs and tolerating nativist and racist extremism in the name of domestic drug control. The courts were attempting to judiciously sort out who was and who was not "white" in order to determine eligibility for citizenship. The unquestioned premise behind the laws they interpreted was that whites had more capacity for republican government and for cultural development than nonwhites. Race, as Jan López observes, was "an implacable" idea that had real value (1996, 169).

The movement toward punitive prohibitionism as the nation's preferred approach to drug control emerged over time, solidifying with each racialized drug crisis. This chapter considers these episodes, drug by drug, in order to show how criminalization became the starting point for thinking about the control of illicit drugs. The demonization of these drugs, my analysis suggests, could not have occurred without a sustained effort to cultivate white anxieties about specific racial and ethnic groups.

**Drug Use Becomes a Social Problem**

The contrast between current drug policy and what prevailed during the eighteenth and most of the nineteenth century could not be greater. Opium was a home remedy in some parts of the nation, with recipes passed on through families. Marijuana was best known at first for its medicinal qualities. These drugs were attractive to doctors and to patients mainly because they offered pain relief, a perennial concern, and were readily available. There were few other medical options for chronic diseases such as tuberculosis or surgical procedures. During the Civil War, morphine, which had been synthesized from opium in 1803, provided pain relief for injured soldiers on both sides of the conflict. Over-the-counter narcotic-based remedies were available for toothaches, colds, and other minor ailments. Many habit-forming drugs were advertised in magazines. Toward the end of the nineteenth century, new, more powerful drugs such as heroin were appearing, competing with opium, laudanum, and morphine, which were already widely used. Doctors prescribed these drugs and not infrequently were addicted themselves.

Opium was the first narcotic drug to find favor with the medical and pharmaceutical industries. Babies were fed opium to keep them quiet. The elderly took it for rheumatic pains (Berrie 1977). Some physicians regarded opium as less harmful than alcohol, "which, when taken in anything like excess, ruins the health and fills our jails and workhouses. We should be inclined rather to class opium with tobacco in its ill-effect (in excess) as regards the body" (Eliot 1881, 29). Famous works such as Samuel Clemenoff's poem, "Kubla Khan," were written under the influence of opium, and some writers extolled its virtues as a mind-clarifying, mood-brightening drug. Thomas de Quincey, for example, wrote *Confessions of an English Opium-Eater* in 1821, arguing that "whereas wine disorders the mental faculties, opium, on the contrary (if taken in the proper manner), introduces amongst them the most exquisite order, legislation and harmony. Wine robs a man of self-possession; opium greatly invigorates it" (1898, 63). Morphine was thought to have these
qualities in even higher degree. With the development of the hypodermic syringe in the middle of the nineteenth century, it became possible to inject pure morphine, which attracted members of the professional classes, writers, and wealthy people in Europe and the United States.

Opiate addiction began to be recognized as a problem in the 1830s, but it was not until the 1870s that doctors turned serious attention to the extent of opiate addiction and its etiology. By this time, addiction to opium and its derivatives was widespread. Addiction had become known as "the soldier's disease," in recognition of the number of morphine-dependent soldiers emerging from the Civil War. People of all ages were complaining to their doctors about an "opium appetite" induced by their prescriptions and by commercial products like Mrs. Winslow's Soothing Syrup. In this period the addicts were, in the words of one historian, "an irregular lot, cutting across social and occupational lines" (Morgan 1981, 8).

No federal agency existed to safeguard the purity of drugs or to warn of their dangers. Doctors had no national organization to give voice to their concerns or to regulate their practices. The well-organized pharmaceutical industry resisted any attempt at legal controls. Each new narcotic drug was touted as a "wonder drug" and sometimes, ironically, pressed into service as an antidote for addiction to its predecessor. Thus heroin was at first recommended as a cure for opium addiction. In this laissez-faire atmosphere, it became known only gradually that all of the powerful new pain relievers were addictive.

The introduction of cocaine in 1884, of heroin in 1898, and of barbital in 1917 were added to the addiction problem. All were regarded as "wonder drugs," despite scattered warnings of their potential for abuse. When cocaine became available, for example, Sigmund Freud and other European experts praised it in medical journals as an anesthetic and stimulant; major drug companies offered it for sale. Vin Mariani, a tonic containing Bordeaux wine treated with coca leaves, became very popular throughout Europe and the United States in the latter part of the century. Queen Victoria, Pope Leo XIII, and Pope Saint Pius X were Vin Mariani drinkers; Pope Leo gave the drink a Vatican gold medal and appeared on a poster endorsing it (Morgan 1984, 16, 18, Wikipedia, http://en.wikipedia.org/wiki/Vin_Mariani).

Morphine and heroin were also popular and accepted remedies. The 1897 edition of the Sears Roebuck catalog carried hypodermic kits designed for morphine users, complete with vials and carrying cases (Inciardi 1992, 5). The Bayer Pharmaceutical Company began to market heroin in 1898 as a nonaddictive alternative to opium and morphine, and the philanthropic St. James Society supplied free samples through the mail to morphine addicts who were trying to give up the habit ("Opium throughout History" 1998). David Musto (1973) estimates that there were approximately 250,000 opium addicts at this time, a higher rate of addiction than at any time in the nation's history.

At the same time, some doctors were becoming disenchanted with narcotics and members of the public were beginning to be aware of the dangers of addiction. By the turn of the century, many doctors had discontinued prescribing opium because of the risk of addiction and druggists were expressing concerns about the new wonder drugs (e.g., Practical Druggist 1897, 35). Popular magazines were warning consumers about opium in patent medicines and calling for labeling of all patent drugs. Samuel Hopkins Adams, for example, wrote a long series of articles in Collier's magazine describing the dangers of patent and prescription drugs. Muckraking journalists like Adams helped to change the climate of opinion about the drug industry (Inciardi 1992, 13).

Congress heeded the rising sentiment against uncontrolled availability of habit-forming drugs and called for a uniform approach when it passed the Pure Food and Drug Act in 1906. The new law required labeling of all ingredients in medicines. Knowledge about the addictive potential of narcotics may have been the most important factor in reducing the rate of addiction. When World War I broke out, military recruiters found relatively little addiction among their enlistees. Of the 3.5 million men inducted into the armed services, only 3,284 were rejected because of addiction to opiates. The data on drug use in this period are unreliable, however. There were no national surveys of drug use and no centralized records on medical treatment of addiction. James Hawdon estimates that there was a significant reduction in the use of narcotics, but it is difficult to be sure (1996, 192–95).

At this time, the addict population was shifting. Initially, native-born whites with the resources to seek medical attention had been overrepresented, while minorities and the poor were underrepresented. Doctors constituted the greatest proportion of male addicts; women at home under a doctor's prescription accounted for most female addicts. As doctors shifted their patients away from narcotics and this initial addicted population died off, the addict pool became younger, darker, poorer, and predominately male (Duster 1970; Musto 1973). More people were becoming addicted through pleasure-seeking activities. Workers and unemployed young people were moving into big cities and turning to marijuana, cocaine, and heroin to replace alcohol made scarce by the advent of Prohibition. Historian David Cortwright argues that the change in the composition of the addict...
population was “the crucial precondition for the criminalization of American narcotic policy” (2001, xi). Opium offers a good case in point.

Opium and the Yellow Peril

Toward the end of the nineteenth century, the public image of opium began to change. While still prevalent in medicine as an analgesic, it was also beginning to be associated with what was regarded as a peculiarly Chinese vice: opium smoking. In fact, Europeans, not the Chinese, started the practice of smoking opium. The Chinese learned it from Dutch sailors in the 1600s (Booth 1996, 105-6). But for Americans upset by the presence of so many Chinese in the western states, the white ancestry of opium smoking was irrelevant.

Large numbers of Chinese men had arrived in California during the 1850s seeking work building the railroads and mining for gold and other minerals. The laborers were welcomed at first because they were willing to take hard, dangerous jobs at low pay. Ten thousand Chinese men were on the payroll of the Central Pacific Railroad, for example, and the Southern Pacific was built almost entirely with Chinese labor (Sandmeyer 1939). An estimated eighteen thousand worked in San Francisco factories in the 1870s. Relatively few moved to eastern cities or the South.

The presence of so many foreign workers willing to accept very low wages and dangerous working conditions raised the same economic and social concerns that low-paid, illegal immigrant labor does today. Employers enjoyed the availability of low-wage labor, while the laboring classes resented this flexible, cheap, submissive source of competition. As the Sacramento Record-Union editorialized in its January 10, 1870, issue:

The Chinaman is here because his presence pays, and he will remain and continue to increase so long as there is money in him. When the time comes that he is no longer profitable, that generation will take care of him and will send him back. We will not do it so long as the pockets into which the profit of his labor flows continue to be those appertaining to our pantaloons.... The people of California, while protesting against their presence, continue to utilize their labor in a hundred ways. In this matter private interest dominates public interest.

The subordination of Chinese immigrants through law began almost immediately. The newcomers were restricted to small areas of West Coast cities. Foreign miners were taxed, and in 1852 Congress levied a tax on all remaining Chinese, providing for seizure and sale of their property upon failure to pay. Although this law was later declared unconstitutional, many local laws survived. By the 1870s, San Francisco ordinances prohibited Chinese from taking public employment, buying real estate, and securing business licenses. Many jailors cut off the long, knotted pigtail of Chinese men, brought in for minor crimes, on the grounds that the pigtail violated health regulations.

Anti-Chinese sentiment took many forms. In 1871, a Los Angeles mob attacked the Chinese quarter, appropriating all moveable property and killing eighteen people (Sandmeyer 1939, 48). Anti-Chinese clubs organized and then combined as the Anti-Chinese Union “to unite, centralize, and direct the anti-Chinese strength of our Country.” Members pledged not to employ Chinese or to purchase the goods of anyone who employed Chinese. U.S. senators, congressmen, and prominent state politicians were members (Sandmeyer 1939, 57). In 1877, San Francisco’s representative before the Joint Special Committee of Congress expressed the sentiment of these popular groups:

The burden of our accusation against them is that they come in conflict with our labor interests; that they can never assimilate with us; that they are a perpetual, unchanging, and unchangeable alien element that can never become homogeneous; that their civilization is demoralizing and degrading to our people; that they degrade and dishonor labor. (quoted in Sandmeyer 1939, 25)

The movement succeeded in creating a California state constitution that restricted the employment of aliens, prevented them from owning land and from voting, discouraged their immigration, and facilitated their deportation. There was only scattered opposition from churches with missionary activities in China. One delegate at the California state constitutional convention expressed the prevailing sentiment in unequivocal terms:

The State should be a State for white men, without any respect to the treaty, or misinterpretation of any treaty. The State has the right of self-preservation. It is the same right that a man of family has to protect his house and home. ... We want no other race here. The future of this republic demands that it shall be a white man’s government, and that all other races shall be excluded. (Wills and Stockton 1881, 704, quoted in Sandmeyer 1939, 70)

This movement ran into obstacles at the national level. Trade with China was becoming ever more important to U.S. shipping interests, and many churches had missions in China. With the backing of commercial shippers, the U.S. government had negotiated a trade treaty in 1868 that gave
Chinese immigrants some protection against discrimination by Americans. While this treaty was unpopular in California, it had the support of shipping and manufacturing interests and, of course, the federal government. But the tide in Congress turned against Chinese Americans in 1882, when the votes of the Pacific coast states became a crucial levering factor in national elections.

Anti-Chinese sentiment was also rising around the nation. In 1880 a riot broke out in Rock Springs, Wyoming, in which more than twenty Chinese were killed. In Tacoma, Washington, citizens burned the city's Chinese quarter, and locals in other northwestern cities—Olympia and Seattle in Washington and Portland in Oregon, for instance—almost did. Samuel Gompers, founder of the American Federation of Labor, forcefully expressed the antipathy that these mobs demonstrated through their actions in his February 1902 testimony before the U.S. Senate Committee on Immigration:

> The presence in our country of a people entirely out of harmony and training with American comprehension of liberty and citizenship, who are alien to our customs and habits, as different from us in political and moral ideas as it is possible for two peoples to be, who are so thoroughly grounded in race characteristics that even the generations born and reared among us still retain them, can not but exercise a most demoralizing effect upon the body politic, the social life, and the civilization of the people of our nation. (Kaufman, Albert, and Palladino 1996, 471)

Gompers attributed to the Chinese an almost superhuman ability to survive deprivation: "He lives upon less than any other man in the world can live, and seems to thrive and prosper. He can live inhaling the miasmatic fumes of open cisterns and open sewerage with every disease around him and contaminating everyone, and yet remain himself immune from its effects and influence" (Kaufman, Albert, and Palladino 1996, 472–73). In 1882, Congress, after rather exhaustive hearings, prohibited all immigration by Chinese laborers; it later restricted the movement in and out of the country of those already in the United States, and created strict regulations for all other forms of Chinese immigration (see Ngai 2004; Calavita 2000, 2006).

The Criminalization of Opium

Opium smoking became a significant element in the anti-Chinese movement. The practice initially was portrayed as a sign of Chinese degeneracy with no attraction for whites. As Alfred Stöhlé, a well-regarded nineteenth-century medical expert concluded: "It is true that opium is not likely to become popular among an active and industrious race like the Anglo-Saxon, whose preference must always be for the more potent, though less permanent, stimulus of ardent spirits" (quoted in Terry and Pellens 1928/1979, 95). Local ordinances restricted opium dens to the Chinese quarter or the poorer parts of town, where they formed tight-knit cultural centers for the Chinese. Opium could be purchased and smoked there, providing a respite from the harsh existence of poorly paid, rough employment far away from families and familiar institutions.

But even at this time, opium smoking was beginning to attract a different clientele, and to cross racial boundaries as it did. Chinatowns, at once symbols of exclusion, were also major sources of attraction for tourists and locals curious about things foreign. Legitimate Chinese businesses, such as laundries and restaurants, drew many white customers. Beginning in the 1870s, opium dens began to attract petty criminals, prostitutes, and street people, as well as young whites from comfortable circumstances seeking a taste of the exotic. G. Pichon, a French physician who had studied fifty-five cases of opium addiction, divided these users into two groups: the first, those addicted through therapeutic treatments and the second, those "drawn toward the unknown and mysterious, to licentiousness if they do not belong to that great class of unstables, abnormals, degenerates, etc...." (quoted in Terry and Pellens 1928/1979, 103). The beautiful aristocrat enchanted by the opium pipe became a stock character in popular entertainment (Cortwright 2001, chap. 2). By the late 1870s, opium smoking was moving east to a variety of locales, including flophouses and luxurious retreats (Morgan 1981, 35).

Opium smoking became a focus for more vigorous police action during this period. For the most part, the dens the police raided were the ones frequented by whites (Cortwright 2001, chap. 2; Lauderdale and Inverarity 1984). Local politicians cited concerns that children might be attracted to this indolent vice, which was thought to enslave its users. Advocates of vigorous enforcement also routinely exploited white fears of racial mixing. The Hearst newspapers, for example, portrayed opium as a drug that Chinese men used to reduce and enslave white women.

Jacob Riis takes a similar tack in How the Other Half Lives, a muckraking classic framed as an exposé of the lives of the poor in New York City first published in 1890. The book was an instant hit. President Theodore Roosevelt praised it as “an enlightenment and an inspiration.” Riis describes tenements in Chinatown teeming with white women who had prostituted themselves to Chinese men to satisfy their addiction to opium:

> The women, all white, girls hardly yet grown to womanhood, worshipping nothing save the pipe that has enslaved them body and soul. Easily tempted
from homes that have no claim upon the name, they rarely or never return. . . . Of the depth of their fall, no one is more thoroughly aware than these girls themselves; no one is less concerned about it. The calmness with which they discuss it, while insisting illogically upon the fiction of a marriage that deceives no one, is disheartening. (1890/1957, 70–71)

Riis, who saw no value in the continued presence of the Chinese in the United States, opined that these women had been seduced by the "cruel cunning" and "crafty submissiveness" of the Chinese (1890/1957, 72).

Courts supported laws against the opium trade, even when they suspected that legislatures were acting out of racial fear or malice. An 1886 Oregon case exemplifies the reasoning that allowed convictions to stand. Yung Ion brought a habeas corpus action challenging his imprisonment for opium selling and the confiscation of his supplies. Judge Deady rejected his petition, explaining that the drug was unfamiliar to Americans, "save among a few aliens," which gave the legislature a broad mandate to impose its own moral vision:

"Smoking opium is not our vice, and therefore, it may be that this legislation proceeds more from a desire to vex and annoy the "Heathen Chinese" in this respect, than to protect the people from the evil habit. But the motives of legislators cannot be the subject of judicial investigation for the purpose of affecting the validity of their acts. It is the duty of the law-maker as far as his power extends, to enact laws for the conservation of the morals of society, and to promote the growth of right thinking and acting in all matters affecting the physical or mental well-being of its members."

The vehement and violent grassroots movement against Chinese immigrants put the federal government in an awkward position. The United States was courting China as a trading partner—U.S. shippers saw a potentially huge market for their goods (Stelle 1981; Brummett et al. 1999). In Washington, China was considered an important ally because of the size of its markets. The situation became grave when Chinese merchants, outraged at the treatment of their countrymen in the United States, began planning a boycott of U.S. goods. Somehow the federal government had to improve its relations with China while not alienating the American public. The answer lay in narcotics control. This was an issue of real interest to the Chinese government. Opium addiction was widespread, thanks in part to Great Britain's determination to maintain its profitable trade in that drug (Musto 1973, 28–53).

During the nineteenth century, the Chinese government had fought, and lost, two wars with Great Britain in an effort to close its harbors from further shipments. Britain had played the role of a big, aggressive drug cartel in forcing China to continue receiving opium from its Indian holdings in trade for silk and other goods. Chinese resistance had been met with British military might. When China lost the first war in 1842, Britain forced it to open up five new ports to the importation of opium. After China's second defeat in 1856, Britain expanded its market, and opium poured into China in unprecedented quantities. By the end of the nineteenth century, it was estimated that over one-fourth of the adult male Chinese population was addicted. In this situation, not surprisingly, the beleaguered Chinese government welcomed the strong U.S. stand against opium (Brook and Wakabayashi 2000; Hanes and Sanello 2002).

The growing presence of the United States in world affairs also drew it into the opium question. In 1903, the United States found itself confronted with a decision in the Philippines that illustrated the moral issues at stake. The Philippines had become a U.S. colony after the Spanish American War, but Spain continued to hold a monopoly on opium selling there. The U.S.-appointed governor of the Philippines, William Howard Taft, recommended allowing Spain to continue to supply the twelve thousand registered local addicts, most of whom were Chinese, not Filipino. The income from the opium sales could help fund community improvement projects, including education. Missionaries, however, argued that the United States must not maintain addicts, and President Theodore Roosevelt agreed, ending the arrangement without further ado. His decision was an early sign of the power that Prohibitionist arguments could pack in political debate (Musto 1992, 33).

International Agreement: Gateway to Criminal Controls

The realization was growing among anti-narcotics activists that their best option for achieving effective controls lay in international action. A treaty calling for curbs on the importation of dangerous drugs would force an indifferent Congress to create implementing legislation of national scope. Such legislation would be much more efficient than pressuring Congress directly or, alternatively, working from the grass roots. The individual states had not been very successful in creating effective narcotics-control legislation (Cortwright 2001).

The activities of two individuals during this period stand out: Dr. Hamilton Wright and Bishop Henry Brent. The State Department appointed Wright, a specialist in tropical diseases, as its opium commissioner in 1908.
Brent, Episcopal bishop of the Philippines, was in charge of an investigative team whose mission was to offer narcotics-policy alternatives to the federal government. Both men were dedicated drug prohibitionists with strong personalities. Wright, in particular, saw narcotics in absolutist, moralistic terms as an unalloyed evil. The two men lobbied for an international meeting to study the opium problem and make recommendations. They succeeded, and the Shanghai Commission was held in February 1909, with a mixture of European and other nations in attendance. Brent was elected president of the Commission, and Wright became its acting head. Wright then used the rather vague recommendations of the Commission to promote domestic legislation, while he and Brent pressed hard for more international meetings and stronger powers.

Wright used racism to his advantage in arguing for strong federal narcotics controls. In his 1910 report to Congress, he drew on the by-now familiar image of racial mixing between Chinese men and white women to make his point about the dangers of opium smoking in the United States: “One of the most unfortunate phases of the habit of opium smoking in this country is the large number of women who have become involved and were living as common-law wives of or cohabiting with Chinese in the Chinatowns of our various cities” (1910, 45). Wright reserved his strongest racial language for his discussion of cocaine, however. Including cocaine in his discussion was an attention-getting device. Cocaine was not a problem of international concern at that time, and it is not, pharmacologically speaking, a narcotic. Wright, as a medical expert, knew this. He also must have known that cocaine use had been in decline for several years (Helmer 1975, 51–52).

The Black Cocaine Threat: A Key to Southern Support

Wright focused on cocaine in his report to Congress. David Musto surmises, to help make narcotics control more appealing to southern members of that body, who were leery of federal drug legislation. The southerners feared that a strong federal tax law with regulatory purposes might be a precedent for federal civil rights legislation that could interfere with the system of racial apartheid that the South maintained under the rubric of states’ rights. But many whites from the South were also fearful of cocaine use by local Blacks. Many agreed with the Memphis police chief who claimed that the effect of cocaine “is much more violent than that of whisky” (New York Times 1905, 14). It was widely believed that Blacks were using cocaine in epidemic proportions. State legislatures in Alabama, Georgia, and Tennessee had anti-cocaine bills under consideration in 1900, spurred on by fears that cocaine was giving younger Blacks a new sense of boldness (see, e.g., Spillane 2000, 94–114). A 1905 report sponsored by the American Pharmaceutical Association opined that “the negroes, the lower and immoral classes, are naturally most readily influenced, and therefore among them we have the greater number [of users], for they give little thought to the seriousness of the habit forming” (quoted in Morgan 1981, 92).

To gain southern support, Wright stressed the dangers of unregulated cocaine use in terms that sound almost contemporary: “It is the unanimous opinion of every state and municipal body . . . that the misuse of cocaine is a direct incentive to crime, that it is perhaps of all factors a singular one in augmenting the criminal ranks. . . . It is more appalling in its effects than any other habit-forming drug used in the United States” (1910, 48). Cocaine use among southern Blacks, especially those from among the “humbler ranks,” posed particular dangers: “It has been stated on very high authority that the use of cocaine by the negroes of the South is one of the most elusive and troublesome questions which confront the enforcement of the law in most of the Southern States” (Wright 1910, 48–49). Wright blamed unscrupulous parties, presumably from outside the region, for the spread of cocaine in the South and for its use throughout the nation in large cities “to corrupt young girls” who shortly thereafter “fall to the ranks of prostitution” (Wright 1910, 49). Historian Martin Booth concludes that “for all his philanthropic intention, Wright was also a scaremonger playing upon xenophobic and racial unease, stressing the dangers drugs posed to white people” (1996, 198).

Wright’s anti-drug campaign coincided with the high point of anti-alcohol fervor in the United States and abroad. The United States had grown more confident in playing a leadership role, and other nations were beginning to pay heed to its prohibitionist arguments (see, e.g., Morris 2002). Addictive and habit-forming drugs of all types were increasingly under attack. The Dutch, for example, were reconsidering their policy in colonial Indonesia, where they had long supported opium production as a way to raise revenue (Rush 1990, 255). And America was on the brink of war. The idea that the nation must gird for conflict and purity itself was in the air. There was a sense that the nation was surrounded by dangerous continents, with South America identified with cocaine, Europe with heroin and morphine, Africa with hashish, and Asia with opium. It was well known that the welter of state and local drug laws was chaotic and easily evaded. By 1914, H. Wayne Morgan argues, the national mood was such that national legislation seemed both logical and necessary (1991, 102, 106–7).

A public mindset increasingly open to regulation was not enough to overcome Wright’s overbearing and uncompromising personality; however,
Although he drafted model legislation and circulated it in 1909, he proved to be an ineffective politician. His efforts faltered under pressure from the pharmaceutical industry and the medical lobby. The State Department eventually found an appropriate sponsor in Representative Francis Burton Harrison of New York, who served on the Foreign Relations Committee (Musto 1992, 34). When Congressman Harrison agreed to take charge of the legislative effort, Congress finally acted. The final legislation was considerably softer than Wright’s first effort. Cannabis and chloral hydrate were dropped from the law, the proposed heavy tax on drug transfers became nominal, patent medicines received some exemptions, and record-keeping rules were eased (Cortwright 2001, 100). Like the Pure Food and Drug Act and most other Progressive-era legislation, the Harrison Act was born of strong beliefs, but fall of compromises.1

The Rise of the Negro Cocaine Fiend

The media played a significant role in creating a sense of urgency about drugs in the period just before and just after the 1914 adoption of the Harrison Narcotics Act. Popular accounts of the drug problem, sometimes offering wildly inflated estimates of drug use, portrayed the United States as a drug-addicted nation. While the presence of medically induced addiction was acknowledged, the focus tended to be on the growing reach of unregulated recreational drug use in college dormitories, the workplace, and the ranks of the military, and especially among the very young. The Literary Digest warned that “school children, even at the ages of seven and eight are offered cocaine and heroin by peddlers about public-school buildings” (1914, 687). Popular accounts associated cocaine with the drug world and dissipation. Its easy availability in drug stores, bars, and even at soda fountains was condemned, and reformers were at work trying to ensure that all traces of it were removed from soft drinks.

The media often linked race, drugs, and crime, giving substance to white fears of the potential for Black drug-induced violence. The New York Times and other news media reported with concern, for example, that labor contractors in the South were distributing cocaine to their Black workers to increase productivity. In both the North and South, crimes committed by Blacks allegedly under the influence of cocaine were widely reported in the South were distributing cocaine to their Black workers to increase productivity. In both the North and South, crimes committed by Blacks allegedly under the influence of cocaine were widely reported in graphic detail: “Most of the attacks upon white women of the South are the direct result of a cocaine-crazed Negro brain. Thousands of clingy hovels are scattered through the Negro sections of southern cities where ‘snow’ is retailed in dime boxes through back doors which are prevented by chains from opening more than three inches” (Literary Digest 1914, 687; and see generally Morgan 1981, 91–93).

Medical doctors played a significant role in the campaign against cocaine, often employing a racial subtext to bring home the dangers of cocaine in the hands of nonmedical personnel. In the example-filled style of scientific writing designed for popular audiences, doctors described horrific instances of murder and mayhem by cocaine-crazed individuals of the poorer classes of society and drew “scientific” conclusions about the “cocaine plague.” In a 1908 article in the magazine section of the New York Times, for example, Dr. Leonard Corning described the cocaine habit as “the most terrible vice ever acquired by a civilized people” and the most rapidly widespread because of its accessibility to “the poorest and most depraved” in society: “There is little doubt but that every Jew peddler in the South carries the stuff, although many States have lately made its sale a felony.” Corning recommended strong action against cocaine sellers because, once acquired, the cocaine habit is incurable.

Dr. Edward Huntington Williams wrote in the same vein, focusing on the South and the “Negro cocaine fiends” there: “There is no escaping the conviction that drug taking has become a race menace in certain regions South of the line” (1914b, 12). He claimed that cocaine frequently drove men insane, and the insane cocaine fiend could turn murderous. These drug users, he suggested, were virtually impervious to force and even to bullets: “Bullets fired into vital parts that would drop a sane man in his tracks fail to check the ‘fiend’” (1914b, 12). Law enforcement personnel were reportedly acquiring guns with “greater shocking power” to deal with “cocaine-crazed Negroes.” Like Corning, Williams was pessimistic about cures: “Once the negro has formed the habit, he is irreclaimable. The only method to keep him from taking the drug is by imprisoning him. And this is merely palliative treatment, for he returns inevitably to the drug habit when released.” As he wrote in the Medical Record in the same year:

Once the Negro has reached the stage of being a ‘dope taker’—and a very few experimental sniffs of the drug make him a habitual—he is a constant menace to his community until he is eliminated. For his whole nature is changed for the worse from the habit. Sexual desires are increased and perverted, peaceful Negroes become quarrelsome, and timid Negroes develop a degree of ‘Dutch courage’ that is sometimes almost incredible. A large proportion of the wholesale killings in the South during recent years have been the direct result of cocaine, and frequently the perpetrators of these crimes have been hitherto inoffensive, law-abiding
Negroes. Moreover, the Negro who has once formed the habit seems absolutely beyond redemption. Imprisonment "cures" him temporarily; but when released he returns to the drug almost inevitably. (1914, 247)

Such articles send a complex message. They draw their persuasive power from a potent combination of pseudoscientific gloss and bare-bones reporting, for example, "nine men killed in Mississippi on one occasion by crazed cocaine takers, five in North Carolina, three in Tennessee." Blacks on drugs are described in frightening terms, but with a hint of paternalistic concern. As ignorant, undisciplined people with weak moral standards, Blacks could be seen, in a patronizing way, as victims of cocaine. Williams, for example, blamed the politicians who had failed to control the availability of cocaine for forcing "a new and terrible form of slavery upon thousands of colored men—a hideous bondage from which they cannot escape by mere proclamation or Civil War."*

The image of the Negro cocaine fiend bears a striking resemblance to an earlier invention that played particularly well in the southern states: the alcohol-crazed Negro. Both of these stereotypes proceeded from the same idea: that drugs and Blacks are a dangerous, explosive mixture. The underlying idea was that civilization had not quite taken hold in nonwhites. Drugs loosened what little self-control they had, threatening violence and, most serious of all, sexual predation of white women. The acceptability of such racist stereotyping in respectable publications is noteworthy. This was the era of Jim Crow legislation in the South, and of violence, occasional lynchings, and social separation throughout the nation. Mob violence against Blacks and Chinese was not uncommon. Racial attitudes, at best, were patronizing. Policy dialogue was a white-to-white form of communication in a white-dominated society. It is disconcerting to realize that some of these racialized images persist in contemporary drug-war rhetoric. White Americans have never abandoned the idea that drug taking in minority populations is particularly dangerous, despite the waxing and waning of fears about particular drugs.

**Narcotics Control Becomes Police Work**

The racial scare tactics that helped propel the Harrison Narcotics Act toward passage were less in evidence once the law went into effect in March 1915. Race and class nevertheless helped to determine how the law was enforced. Federal and state law-enforcement personnel concerned themselves with drug use by the urban poor and working classes (see, e.g., Bailey 1916, 314–16). Respectable members of society whose addictions were of long standing were quietly tolerated; most towns had resident addicts who refilled their prescriptions without interference. The public did not regard such people as real addicts because their cases did not fit the profiles of cases reported regularly by police agencies (Morgan 1981, 125, 127).

Attitudes toward drug takers were hardening in this period. With the help of the mass media and the tireless efforts of anti-drug activists, people were beginning to see drug addiction more as a vice than as a disease. It was often said that weak, immoral people tended to take up the habit, drugs destroying their already-damaged higher functions and rendering them unfit for society. Experts conceived the addict population as divisible into two parts: the medically addicted and mentally ill, who deserved sympathetic treatment, and the nonmedical addicts drawn to crime and violence—these "voluntary" addicts deserved prison. Drug use was increasingly moralized as a matter of good and evil. The groundwork was being laid for strong federal controls.

**Institutionalizing Federal Narcotics Law**

The Harrison Act required doctors, pharmacists, and others who prescribe narcotics to register and pay a tax, and so enforcement responsibility was lodged in the Bureau of Internal Revenue of the Treasury Department. It was not entirely clear, however, when narcotics prescriptions were permitted. The new legislation permitted physicians to prescribe narcotics "in good faith" and "in the course of his [sic] professional practice," but was silent on whether medical personnel could continue to give narcotics to addicted patients indefinitely, a crucial issue for doctors. This question received little attention in the hearings on the Act (Cortwright 2001, 104). The fact that enforcement authority was lodged in an agency accustomed to prosecuting smugglers, tax evaders, moonshiners, and other morals crimes, however, did not bode well for doctors.

Treasury agents, it turned out, were not inclined to see addicts as medical patients or drug use as a health problem (Nolan 2001, 28; Morgan 1981, 110). Early on, the Bureau decided that it would aggressively oppose programs that allowed addicts to maintain their addictions through controlled doses managed by physicians. Revenue agents began arresting physicians, but were soon rebuked by the Supreme Court in United States v. Jin Faey Moy, a 1916 decision ruling that the Harrison Act did not give government authority to prosecute addicts or the physicians who maintained them. That decision was the high-water mark of judicial resistance to the Harrison Act. No other case law developed that challenged Treasury's power to make arrests, however.
In response to the Court's decision, the Bureau did, for a brief time, relax its efforts to prosecute addicts and even supported clinics to dispense narcotics to registered addicts. Many of these clinics operated effectively, serving addict populations efficiently and with a high degree of medical supervision. They nevertheless lacked widespread support in the medical profession because they did not seem to lead to a cure (Morgan 1981, 112-13). In 1919, perhaps swayed by wartime jitters about the evils of "Seductive Chinese" and "Negro cocainomaniacs," the Supreme Court signaled that it no longer supported a physician's right to dispense narcotics simply to maintain an addict (Musto 1973, 134). Congress amended the Harrison Act that year to reflect this interpretation. The Treasury Department used the new doctrine to move against the clinics it had previously supported, arresting doctors who resisted its interpretation of the law (Musto 1973, 247).

By 1925 the last clinic had closed, despite a Supreme Court decision holding that addicts had a right to medical care equivalent to other patients. Meanwhile, the Narcotics Division had banned all legal narcotics sales. This forced many addicts, for the first time, to buy from illegal street dealers. A robust black market in drugs developed as physicians abandoned their addicted patients (Musto 1992, 35-38; Inciardi 1992, 15-16). At this time, Nolan notes, "discussion of drug addiction, by both those inside and outside the medical community, leaned toward the moralistic rather than the therapeutic perspective" (2001, 30).

The number of narcotics addicts in prison was growing rapidly. By 1925 there were 2,569 narcotics convicts in federal prisons out of a total population of 7,770. Ten years earlier there had not been even one. Congress voted in 1928 to establish two farms for drug offenders, which were essentially prisons with some medical personnel on the premises. Throughout this period, the popular press continued to publish fearful stories, sometimes describing America as the most drug-addicted nation on earth, rivaled only by pathetic China. Narcotics were blamed for all manner of serious, violent crime. As a 1924 Saturday Evening Post article warned: "With the restraining forces of the higher nature gone, the addict feels no compunction whatever in committing any act that will contribute to a perverted supposition of his own comfort or welfare. And one of these acts, a characteristic one, is that the addict has an insane desire to make addicts out of others." (Lampman 1924, 41).

Doctors were mixed in their reactions to the hardening of federal narcotics policy. Critics argued that the Harrison Act was a tax act, nothing more, and that government had perverted the purpose of the Act in prosecuting doctors who prescribed narcotics to their patients. Representative John Coffee complained of "the persecution of perhaps a million victims of the diseased condition known as drug addiction" in a 1928 speech to the House of Representatives, attributing the criminalization of addicts to "bureaucratic action" (quoted in Williams 1938, xv-xviii). Dr. Henry Smith Williams wrote an impassioned defense of the doctors caught in the middle of the new prohibitionism. In Drug Addicts Are Human Beings, he describes addicts as unlucky victims of painful diseases, trapped by the new rules that prevented them from getting the medicines they needed to work and survive (Williams 1938).

Although doctors were divided on the culpability of drug addiction, they could hardly have resisted the new federal initiatives. The Narcotics Bureau commissioner, Harry Anslinger, was a smart, ambitious, determined bureaucrat who was a master at telling horrific stories of violence committed under the influence of drugs. Appointed in 1930 as commissioner in a newly created Federal Bureau of Narcotics, he dedicated himself to making his position as powerful as possible. Anslinger did not hesitate to bend facts and data to his cause. Thus in 1937, when the Treasury Department introduced a bill that would increase the penalties for repeat offenders, Commissioner Anslinger argued that when penalties are high, "your narcotic violations practically drop off to nothing." Without specifying what kinds of drug crimes were involved in these prosecutions or what segments of society were being prosecuted, Anslinger insinuated in his testimony that these were the most serious criminals in the nation:

Mr. Anslinger: I think that the greatest benefit of this bill would be to the general public to get the major criminals of the country out of the way. Mr. Towey: Do I understand you correctly to say that you believe that the major criminals of today are drug addicts?

Mr. Anslinger: That is according to the reports of the Department of Justice, drug addicts and peddlers. (Report 1937, 8)

Throughout Anslinger's tenure, he did his utmost to convince the nation to increase drug penalties and reduce judicial sentencing discretion. He was a careful political operator, however, targeting only drugs that would advance the cause for tough federal controls. He did not at first foresee that, with enough negative publicity, even marijuana could qualify for the Harrison Act's list of substances requiring federal attention.

Marijuana Becomes a Dangerous Drug

The rapidity with which marijuana became a dangerous drug provides a useful object lesson in the power of a few skillful tacticians, aided by an
uncritical mass media, to shape public policy. In less than a decade, mari­
juana rose from its lowly status as an ingredient in patent medicines to cure
migraines, rheumatism, and insomnia to a source of insanity, suicide, and
major crime. Racism played an important role in this transformation, as it
had in earlier anti-drug efforts. Once again, the images of nonwhites high
on drugs were cited over and over in accounts designed to arouse fears
in white readers. As in earlier anti-drug campaigns, whites were invited to
imagine that drug users, and the drug itself, were attacking their youth and
their civilization (see, e.g., Fossier 1931, 249; Helmer 1975, 76).

Marijuana was vulnerable to attack by drug prohibitionists. Lobbyists
for the pharmaceutical industry had defended it against Hamilton Wright's
efforts to include it in the Harrison Act because they saw some value in
marijuana for corn plasters, veterinary medicine, and nonintoxicating medi­
caments, but it had never garnered much support from organized medicine
(Musto 1999, 216–17). The profession's lack of interest allowed prohibition­
ists to exploit the drug's long-standing association with Mexicans, who were
increasingly regarded as an alien and unwanted presence. Mexican laborers
had arrived in the western states during the 1920s in significant numbers, at­
tracted by opportunities to do seasonal farm labor. For a time, they supplied
esential labor in rural communities, particularly at harvest time. But the
Depression slowed local economies, sparking widespread white resentment
against local Mexican populations. Marijuana was thought to make them
prone to fights and violence. Some expressed concern about marijuana use
spreading to whites, especially to young people (Morgan 1981, 138; Bonnie
and Whitebread 1974, 71).

The image of the marijuana user grew more dangerous in the mid-1920s
when the Commissioner of Public Safety in New Orleans began a campaign
for federal legislation. He and the news media used sensationalist imagery
to portray marijuana use in graphic terms. Richard Bonnie and Charles
Whitebread describe the change:

In the border towns he was a Mexican laborer, indolent to some, volatile
to others. Local authorities were, by and large, unable to generate any
significant public or political interest, although there were no political ob­
jections to making the Mexican weed illegal. In the port cities, however,
the marijuana user was a "dope fiend," the basest element of American
society. He was a narcotics addict, a pimp, or a gambler; she was a prosti­
tute. (1974, 41)

Elsewhere in the South, there began to be reports of heavy marijuana use
among Black fieldhands. Police officers in Texas claimed that it incited violence
and aroused a "lust for blood," while giving users "superhuman strength." a
scare tactic that had earlier been attached to cocaine and would reappear
in the 1980s in connection with PCPs. Mexicans were reportedly tempting
innocent schoolchildren with the drug (Schlosser 2003, 19). Black communi­
ties in Harlem and other northern cities also were reported to be using it.
Whatever reputation marijuana had as a medicine was lost in this period. By
1931, twenty-nine states had prohibited the use of marijuana for nonmedical
purposes; four more states did so by 1933 (Bonnie and Whitebread 1974, 51).

The Federal Role in Criminalizing Marijuana

The Federal Bureau of Narcotics was uncertain about what approach to
take in regulating marijuana. The idea of extending its reach to marijuana
control was attractive. If the Bureau took on marijuana, it would increase
its authority, riding a wave of anti-Mexican sentiment that was sweeping the
nation. Indeed, the United States deported 400,000 Mexicans and Mexican
Americans in the early 1920s (Ngai 2004, 135). On the other hand, a mari­
juana amendment to the Harrison Narcotics Act could provoke a judicial
rejection of the entire statute. The courts might decide that because mari­
juana was a locally consumed drug, a familiar weed that had been used for
generations for medicinal purposes, it was unsuited for federal legislation.
Some within the Bureau also feared that marijuana was too widespread to
eradicate or control through policing.

At first, Commissioner Anslinger's strategy was to press for state legisla­
tion. He promoted an optional clause in a comprehensive model law, sug­
gesting that a seamless legal network at the state level could complement
federal drug-fighting efforts. When he ran into public apathy and admin­
istrative obstacles, he knew he needed to change his approach. As Bonnie
and Whitebread observe:

The bureau needed to arouse public interest so that the professional ob­
jections would seem inconsequential beside a "felt need" of the legisla­
tures. The "marihuana menace" was an ideal concept for such a campaign.
Thus, beginning in late 1934, Commissioner Anslinger gradually shifted
the focus of the Federal Bureau of Narcotic's publicity campaign away
from the inability of federal law enforcement agencies to deal effectively
with local drug problems toward the need to cope with a new drug men­
ace—marijuana. (1974, 47)

Anslinger decided to back a separate marijuana statute at the federal
level and began speaking out strongly about the marijuana threat across the
nation (Helmer 1977, 54). The Woman's Christian Temperance Union and other women's organizations were interested in helping the cause and offered Anslinger platforms to spread the message. The media assisted in this effort, finding the marijuana menace to make good copy. The New York Times played into the campaign to make marijuana seem more dangerous by eliciting distinctions between marijuana and powerful narcotics (e.g., New York Times 1934b, 1934c, 1934d, 1934e, 1934f, 1934g). Even when the Times did make a distinction between types of drugs, it portrayed marijuana “as appalling in its effects on the human mind and body as narcotics” and toxic enough to kill horses that eat it. For humans, the result of prolonged marijuana use was insanity, as the Times reported matter-of-factly in a 1934 news article:

The raiders found the marijuana, or loco weed, which produces a pleasant, relaxed sensation when smoked, and eventually drives the habitual user insane, growing in abundance on a plot in the middle of the block bounded by Washington, Nassau, Adams and Concord Streets. (1934c)

That the Times got its inspiration from the Narcotics Bureau commissioner is obvious from its detailed coverage of the activities of the Bureau of Narcotics and the commissioner. Anslinger kept a “gore file” of stories of suicide and violent crime to feed to the media. One theme was of white girls induced to have sex with Blacks under the influence of marijuana (Musto 1973, 23). Another was the association of marijuana with crime by minorities. As one Bureau release stated: “Fifty percent of the violent crimes committed in districts occupied by Mexicans, Spaniards, Latin-Americans, Greeks, or Negroes may be traced to this evil” (Bonnie and Whitebread 1934).

Commissioner Anslinger, testifying before Congress in 1937, described marijuana as “dangerous to the mind and body, and particularly dangerous to the criminal type, because it releases all of the inhibitions” (1937a, 3). In his testimony before the Senate, he emphasized the power of marijuana to cause one person to attack another: “I believe in some cases one cigarette might develop a homicidal mania, probably to kill his brother. It depends on the physical characteristics of the individual . . . but all the experts agree that the continued use leads to insanity” (1937b, 16). As he said in a retrospective account, he “hammered at the facts,” appearing on the radio and in public forums; writing articles for magazines; and giving hundreds of lectures, either himself or through his agents, always reporting “on the growing list of crimes, including murder and rape,” associated with marijuana use (Anslinger and Oursler 1961, 38).

Congress passed the Marihuana Tax Act in 1937, when concern about the drug was at its peak. By that time, every state had enacted some form of anti-marijuana legislation. The new law, ostensibly another tax act, was really aimed at deterrence and facilitation of enforcement at the state level. Bonnie and Whitebread describe the Act as “hastily drawn, heard, debated and passed.” It was “provoked almost entirely by the Federal Bureau of Narcotics and by a few hysterical state law enforcement agents hoping to get federal support for their activities; the law was tied neither to scientific study nor to enforcement need” (1974, 127). The pattern of emotional, reactive, quick-fire legislation would be seen again in the adoption of the federal anti-crack legislation.

Although the public still remained largely apathetic about marijuana, this was a significant victory for Anslinger. He continued to stress the danger of marijuana in later publications. In his 1953 book on the history of narcotics control, for example, he called marijuana “a scourge which undermines its victims and degrades them mentally, morally, and physically.” He described the earliest stages of marijuana intoxication, in which “the will power is destroyed and inhibitions and restraints are released; the moral barricades are broken down and often debauchery and sexuality results. Where mental instability is inherent, the behavior is generally violent” (Anslinger and Tompkins 1953, 32–33). He offered stories to back up this conclusion:

A gang of boys tears the clothes from two school girls and rape the screaming girls one boy after the other. A sixteen-year-old kills his entire family of five in Florida: a man in Minnesota puts a bullet through the head of a stranger on the road; in Colorado a husband tries to shoot his wife, kills her grandmother instead and then kills himself. Every one of these crimes had been preceded by the smoking of one or more marijuana “refers” (1961, 38).

During the remainder of his career as Narcotics Bureau commissioner, which spanned over thirty years, Anslinger was consistent in his approach. He dramatized drug addiction in stark terms as “murder on the installment plan” (Anslinger and Tompkins 1953, 7). He was a master of the horror stories of individuals ruined by drugs and the terrible crimes they committed, and he liked to describe drug moguls made rich by the trade. He blamed the Mafia, the Red Chinese, hoodlums, jazz music, and bleeding-heart judges for the continued use of drugs in the United States (Cortwright 2001, 155). The solution was always tougher enforcement of criminal penalties. He supported life sentences for the sale of narcotics to minors, for example. His leadership helped to establish the pattern of
heavy-handed law enforcement—single-minded, heavily reliant on informants, racially provocative, and wedded to long prison terms—that remains in place today.

The medical profession, in the meantime, had effectively been outfланкed. Commissioner Anslinger was able to sway Congress with newspaper clippings and anecdotes in arguing for a marijuana tax act, while medical evidence, for example, was ignored. Mike Gray reports that members of Congress exorcised the one medical expert they did permit to testify in the 1937 hearings, Dr. William C. Woodward, who represented the American Medical Association (2000, 79). The efforts of the New York Academy of Medicine to challenge Anslinger’s claims about the dire medical effects of marijuana with a blue-ribbon committee of experts were similarly stymied when the commissioner got wind of the project and began a smear campaign against members of the committee as “dangerous” and “strange” people long before the final report was released (Gray 2000, 83).

Racism and xenophobia figured into Anslinger’s campaign to stir people to action. He was circumspect about racially stigmatizing language in his congressional testimony and in his books, but the implication was always of upwardly mobile white youth ruined by criminal types, who, it was understood, were from the lower classes, often Blacks or unassimilated white ethnics. The political cartoons of this period were similar in portraying only white people as victims of the drug menace. In reading this literature, one senses pervasive racism that excludes nonwhites from concern, except as a danger to white lives and white sensibilities. Commissioner Anslinger, whatever his personal beliefs about race, played to this audience.

Marijuana Is Displaced by Heroin

By the 1930s politics had changed, but the sensitivity of white Americans to the dangers posed by dark-skinned drug users had not. The new threat was heroin. Its use appeared to be rising in some urban areas and in the military. Commissioner Anslinger was convinced that the Communist Chinese were undermining American soldiers in Korea and Japan by giving them heroin. He offered Congress details of Chinese “dope factories” and plans for “chemical warfare” to fund their cause. He was equally adept in playing to domestic fears of drug violence, describing most heroin addicts as lower class people of low moral character: “We don’t find addicts among children from good homes.” He believed that because they were usually criminals or psychopaths, they should be “plucked out of the community and quarantined” (Anslinger and Tompkins 1953, 170). At least ten years of confinement was necessary, with automatic recommittal for any violation after release and life imprisonment for a second relapse (Anslinger and Tompkins 1953, 211–12). In a 1951 interview with members of Congress, Anslinger agreed that Blacks were more susceptible to narcotic drugs than whites (U.S. News and World Report 1951: 18-19).

The real fear, however, was that heroin could invade white, middle-class society, a fear that resonates with every drug scare. The press excitedly reported that heroin peddlers had left the slums and invaded middle-class neighborhoods (Morgan 1981, 146). Commissioner Anslinger’s influence was behind much of the media hysteria. His face and words appeared often in Reader’s Digest, U.S. News and World Report, Time, and other popular publications in the 1950s. Time described him as “a Pennsylvania Dutchman who knows more about the worldwide drug traffic than any other man on earth” (1955). Anslinger wrote his own copy, purporting to speak as an expert about everything related to drugs, from the hygienic habits of drug addicts (Anslinger and Tompkins 1953, 20-21) to the details of a Chinese Communist plot. He was, historian David Cortwright concludes, a man in the grip of a fixed idea (2001, 159).

The commissioner’s effort to increase penalties for drug possession and sales paid off in 1951 and again in 1956 when he joined forces with Representatives Hale Boggs and Price Daniels, ambitious politicians who were looking for a safe, high-visibility issue for their upcoming campaigns. Anslinger’s preoccupation was different: He was looking for something to blame for the failure of his agency to make significant inroads on the heroin problem. His dramatic congressional testimony and behind-the-scenes maneuvering helped shape the 1951 Boggs Act and the 1956 Narcotic Control Act and move them toward passage. The new laws lumped marijuana with other narcotic drugs and increased penalties across the board. This legislation, the harshest in the nation’s history, reflected Anslinger’s long-standing call for mandatory prison terms. Imprisonment was required for first-offense possession of heroin. Juries could recommend the death penalty for anyone convicted of selling to minors (Cortwright 2001, 156).

Conclusion

Harry Anslinger, Hamilton Wright, Henry Brent, and other anti-drug activists moved the United States firmly toward a punitive approach to drug use over the first half of the twentieth century. They succeeded because they knew who to lobby and what to say, and because they were then able to institutionalize their ideas as part of regular government operations. They
worked closely with a few members of Congress, a handful of top bureaucrats, and, from time to time, the president of the United States. Sensationalist media coverage demonizing drugs and drug users helped them achieve their goals. They did not get a lot of help from the public they courted. A strong base of popular support for drug criminalization was never materialized. The passage of the Harrison Act was a nonevent—it did not even get newspaper coverage at the time (Musto 1973). The reception accorded the Marijuana Tax Act and state narcotics laws was similar.

With or without strong public support, some form of meaningful regulation at the federal level was inevitable, given the growing scientific knowledge about the properties of narcotics and other drugs, and the obvious problems associated with unrestricted use. The Harrison Narcotics Act, with its tax-registration format, left open a range of enforcement strategies. Anslinger masterfully moved into this opening, gaining the position, the resources, and the rhetorical clout to shape the law to his own vision. Without Anslinger's determined leadership, the course that drug law took in the United States would almost certainly have been much different.

Race was clearly a central element in the reconstruction of drug taking from a medical problem to a crime. Advocates of criminal controls made a strategic decision to paint drug use against a lurid, racialized backdrop of sex and violence. This connection was important. Whatever ambivalence Americans felt about pleasure-seeking through drugs, it became a frightening prospect when associated with people deemed dangerous and untrustworthy. The negative racial stereotypes that criminalization advocates deployed clearly resonated with Congress and other key decision makers, for if they had not, Anslinger, Brent, and Wright would not have relied on them. That the media uncritically accepted and spread these images was powerful because they aroused deep-seated emotions about race, sex, and social control. The presumed capacity of habit-forming drugs to change personality and to undermine the sense of social responsibility that underlies productive work and self-control were especially threatening in this context (Morgan 1987, 93–94). The fact that this did not, in fact, happen in most cases was ignored. Anslinger and other activists were interested in conveying an emotional message, not facts about drug use. They frequently evoked America's sense of national destiny as "a city on a hill," an image that has inspired generations since the Puritans with a sense of holy duty. The criminalization of so-called hard drugs thus arose out of a complex of related white fears that nonwhite "others" in American society, assisted by drugs, could destroy this appealing vision of America's essential goodness.

The corruption of youth was another important element in the argument for criminalization. The frequency with which drug prohibitionists repeated the theme of youth ruined by drugs suggests the power of this image. This alarmist tale of youth led astray is invoked by today's advocates of harsh controls and remains a powerful influence. The story is always the same: A young person, full of promise, but naive or insecure, allows him- or herself to be seduced by drugs and pays a fearful price. But there is another face to the image of youth ruined by drugs. Young people, scholars observe, are inherently threatened by or insecure, allows him- or herself to be seduced by drugs and pays a fearful price. But there is another face to the image of youth ruined by drugs. Young people, scholars observe, are inherently threatened by or insecure, allows him- or herself to be seduced by drugs and pays a fearful price. But there is another face to the image of youth ruined by drugs. Young people, scholars observe, are inherently threatened by or insecure, allows him- or herself to be seduced by drugs and pays a fearful price. But there is another face to the image of youth ruined by drugs. Young people, scholars observe, are inherently threatened by or insecure, allows him- or herself to be seduced by drugs and pays a fearful price. But there is another face to the image of youth ruined by drugs. Young people, scholars observe, are inherently threatened by or insecure, allows him- or herself to be seduced by drugs and pays a fearful price. But there is another face to the image of youth ruined by drugs. Young people, scholars observe, are inherently threatened by or insecure, allows him- or herself to be seduced by drugs and pays a fearful price. But there is another face to the image of youth ruined by drugs. Young people, scholars observe, are inherently threatened by or insecure, allows him- or herself to be seduced by drugs and pays a fearful price. But there is another face to the image of youth ru
the scientific studies and medical knowledge relied on by supporters of regu-
larly, and rehabilitative approaches. There has also been a long-standing
imbalance in the effort applied to each side of the policy debate. The pro-
fessional groups that could have made a difference in the policy realm were
not as organized or as active as those in government and already committed
to criminal sanctions.

How significant is racism in maintaining the law-enforcement approach?
Robert Lieberman suggests that every political moment is made up of a
variety of patterns, each with its own logic and pace. These patterns “take
on lives of their own” and offer possibilities for change only when the gap
between ideals and institutions grows large enough to sustain an alternative
view (2002, 701–2). Such a gap occurred briefly in the 1970s when drug use
by college students and heightened sensitivities about racial injustice chal-
lenged the racialized demonization of drugs.16 The rapid return to punitive
approaches to drug violations, however, suggests the tenacity of prohibi-
tionism and a continuing willingness to punish and exclude those who fail
to conform to this nation’s economic, social, and racial ideals.
Introduction


3. This data is drawn from findings in several reports summarized in the New York Times on March 20, 2006: “Plight Deepens for Black Men, Studies Warn,” pp. A1, A18. The cited studies are Ronald B. Mincy, “Black Males Left Behind” (Washington, DC: Urban Institute Press, 2006); Harry Holzer, Peter Edelman, and Paul Offner, “Reconnecting Disadvantaged Young Men” (Washington, DC: Urban Institute Press, 2006); Gary Orfield, “Dropouts in America” (Cambridge, MA: Harvard Education Press, 2004); and Bruce Western, Punishment and Inequality in America (New York: Russell Sage Foundation, 2006). The percentage of Hispanic youth who drop out of school are as high or higher than for Blacks, but the rates of unemployment and crime are much less, according to these reports.

4. These statistics are based on a report by the United States Sentencing Commission: 2003 Sourcebook of Federal Sentencing Statistics, Table 34, p. 29 (2005), and a report by the federal Substance Abuse and Mental Health Services Administration: National Household Survey on Drug Use and Health, 2005.

5. Paul Butler (2003) takes up the possibility that government could usefully seek more racial diversity in the criminal justice process and in prisons. To draw more attention to the racial injustices in the system and to unconscious racism in criminal justice decision making, he recommends “that African-Americans be arrested, tried, and sentenced for drug crimes only in proportion to their actual commission of those crimes” and that a goal be to have “a prison population that more accurately reflects the racial diversity of America” (374).
Chapter One


2. Only one state court of last resort, the Minnesota Supreme Court, ruled against large sentencing disparities for powder and crack cocaine. It did so on state constitutional grounds. See State v. Russell, 477 N.W.2d 886 (Minn. 1991).

3. 190 F.2d 634 (8th Cir. 1951).

4. Id. at 635 n.2.

5. 846 F. Supp. at 796. Chapter 6 looks at the arguments that Judge Cahill developed in greater detail and finds strong support for them in the scientific literature.


7. Id.

8. Id. at 779.


10. Id. at 713.

11. The debate took place on October 11, 2000. ("Mr. Bush: I can't imagine what it would be like to be singled out because of race and stopped and harassed. That's just flat wrong. And that's not what America's all about. . . . Mr. Gore: I . . . hate this practice also.").

12. Discrimination by ethnicity in the development of the law on drugs can be analyzed with the same analytical approach discussed here. The desirability of a synthetic approach is usefully discussed in Cornell and Hartman 2004.

Chapter Two

1. He nevertheless estimates that about 100,000 people were convicted during Prohibition under state statutes, paying fines of more than $75 million (1932, 46).

2. See the discussion in chapter 1 in the section titled "The Racial Impact of the War on Drugs."

3. Forty-one people died on New Year's Day 1927 in New York's Bellevue Hospital, apparently from a single batch of grain alcohol disguised as liquor. The wars over turf among bootlegging gangs were also frequently lethal. Gangs in New York killed more than a thousand people between 1919 and 1930 (Pegram 1993, 174). Their leaders were becoming celebrities at the same time that gang warfare was becoming more violent.

Chapter Three

1. Drug scholars Craig Reinarman and Harry G. Levine (1997, 321–33) coined this useful term, which is discussed at more length in the previous chapter.

2. Although it did not become well known as a pain reliever until the nineteenth century, its lineage is much longer. Martin Booth suggests that even Neanderthal man may have used it (1996, 15).

3. David Cortwright, a well-respected historian of opiate regulation, suggests that there were never more than 313,000 addicts in the United States before 1914. Promoters of Prohibition, such as Hamilton Wright, put the number much higher, but Cortwright suggests that they distorted the facts. This misinformation nevertheless had a profound effect on opinion leaders. It gave the impression that the problem of addiction was growing, when in fact it was declining (2001, 33).

4. This later introduced Roosevelt to nocturnal walks about the city, and the men became friends. Frances Perkins was also impressed by this book, claiming that it had inspired her to adopt a life in social work. See Donald Bigelow's introduction to the 1957 edition.

5. Ex parte Yong Lam, 28 F. 308, 312 (D. Or. 1886).

6. These efforts began in 1850, with a series of bills to increase the duty on imported opium and a tax on domestic manufacture. Later there were bills to forbid opium smoking in the District of Columbia and U.S. territories, none of which succeeded (Cortwright 2001, chap. 2). The U.S. Congress was persuaded to impose a tax on opium and morphine in 1890, under pressure from California, but it was ineffective in reducing drug smuggling. Congress was not particularly interested in opium, which it regarded as a regional policy problem that the federal government had no authority to interfere with.

7. Cortwright refers to the Harrison Act as "a classic piece of progressive legislation" in which "reform effort (restrict the sale of narcotics) met business self-interest (rationalize the narcotic market) to produce a compromise measure. Large pharmaceutical firms were perfectly willing to see small-time unregistered peddlers prosecuted; enlightened and professionalized pharmacists agreed to restrict sale to those possessing a prescription; and the nostrum makers could go on merchandising their wares, provided they contained no more than the allowable amounts of narcotics" (2001, 103).

8. The tone and content of these articles stands in striking contrast to medical literature of an earlier period that focuses on the tragic circumstances of youth drawn in by patent medicines or doctors' prescriptions. See, e.g., a 1903 address before the Pittsburgh Academy of Medicine by Dr. Thomas Simonson, who discussed the greediness of pharmacies that supply young addicts and the need for legislative controls. Simonson had little to say about Blacks. He noted in passing that "the colored race is at the present day by far the greatest consumer of cocaine," but also noted that Blacks are less susceptible to "cocainmania" than whites (1903, 155–56).

9. Consider, for example, a 1919 report conducted by a committee appointed by the secretary of the Treasury that divided addicts into those from "the underworld," who acquired the drug habit from associates, white slavers, or prostitutes, and "the addict of good social standing," who became addicted through a physician, self-medication, or, in rare cases, "as a social diversion. "The medically addicted were sick, deserving of a physician's care, and the rest were "criminal drug addicts whose addiction, in its inception and in its continuance, is due to vice, vicious environment and criminal associations." These "voluntary" addicts, considered by some researchers to be the greater number, belonged in prison (quoted in Terry and Pellens 1928/1970, 120, 130). The tendency to associate drugs with mental illness may be at least partly explained by the fact that experts of the day tended to study addiction by interviewing prisoners and inmates in mental institutions (Cortwright 2001, 177–78; see also Musto 1973, 248–50; Helmer 1975).

10. The drafts were acutely aware of the possibility that the law might be declared unconstitutional as a violation of the principle of federalism that put criminal law enforcement in state hands. This remained a concern even as late as 1937, when the Treasury Department chose to seek a separate law rather than amend the Harrison Act, to prohibit marijuana (Musto 1973, 247).


12. In 1922 the Court went further in United States v. Behrman, 268 U.S. 230 (1922), to outlaw prescription of narcotics to an addict, even if it was the physician's belief that the prescription would help the person regain his or her health.
13. For example, from the New York Times: “The poisonous weed which maddens the seas and emaciates the body of the user, is being sold more or less openly in pool halls and beer gardens throughout the West and Southwest, and, according to some authorities, it is being peddled to school children. The Federal government is powerless to stop the traffic, officials of the Bureau say, because marijuana was left out of the Harrison Act under which the bureau gets its authority to stop the traffic in opium and its derivatives” (1934).

14. See, e.g., the front-page story on December 9, 1934, The Times continued to follow this story, reporting on the role of the Bureau of Narcotics in the break-up of “a plot to make high school students slaves to narcotics” (1943), the discovery of a “mail order dope racket” (1934), and the Bureau’s investigation of marijuana trading at Army camps (1933). Commissioner Anslinger’s name appears prominently in all of these stories.


16. This respite, an exception that proves the general rule, is discussed in the chapter that follows.

Chapter Four

4. Ibid.
7. Ibid.
15. The material quoted below comes from two sources: (1) A series of articles entitled “Cocaine Rocks: The New Epidemic” in the Palm Beach Post & Evening Times, authored by journalist Paul Blythe and introduced into the record by Senator Chiles (Congressional Record 132 [April 22, 1986]: S 4668); and (2) two long pieces by Peter McKillop entitled “Crack and Crime” and “An Inferno of Craving, Dealing and Despair” that Senator Hawkins introduced from the June 16, 1986, edition of Newswalk (Congressional Record 132 [June 9, 1986]: S 1123).
16. Media scholars have developed an analytical tool that is useful in this context. Qualitative discourse analysis, sometimes known as ethnographic content analysis, is an approach to textual analysis designed by media scholar David Altheide and widely used by others. It is designed to discover and clarify themes rather than to test specific hypotheses, on the theory that those who write the news and create other information for public consumption convey this information by creating conceptual frames that give the news direction and significance, providing preordained meaning for what would otherwise be a confusing welter of daily stimuli (Altheide 2004, 325).

17. Eric Sterling, a close observer of this process from his vantage point as assistant counsel to the House Judiciary Committee, reports: “As flawed as the work of the Subcommittee on Crime in developing the mandatory minimum sentences, however, it was much more deliberate than the overall Congressional environment in which the anti-drug legislation was being considered in August, September and October of 1986” (Sterling 1995, 416).

19. Out of 23 members at this time, 10 voted in favor of PL 100-690, 6 were opposed, and 7 did not vote. Three out of four of the newest members voted in favor.

Chapter Five

3. Blumenson and Nilsen note that forfeiture provisions encourage very aggressive enforcement of drug laws, but do not necessarily result in prosecutable arrests. Eighty percent of drug seizures are unaccompanied by any prosecution (1988).
11. 488 U.S. 361 (1990). See also Chapman v. United States, 500 U.S. 453 (1991), holding that the mandatory-minimum statute was not unconstitutionally vague.
13. In 2003, Congress made these downward departures more difficult when it adopted the Feeney Amendment to the Prosecutorial Remedies and Other Tools To End the Exploitation of Children Today (PROTECT) Act of 2002, Public Law 108-21, l 2002, U.S. Statutes at Large 117 (2003): 603. This was in a series of cases that culminated in a 2005 decision, United States v. Booker, 543 U.S. 220 (2005). The Supreme Court ruled that mandatory sentencing rules violate the Sixth Amendment guarantee to a jury trial. Sentences for crimes involving crack cocaine are not likely to be much affected by this decision because the mandatory minimums arise out of congressional legislation. The only impact is on Commission rules to handle cases not covered by the mandatory minimums.
19. Ibid., H 10273.
20. Ibid., H 10269.
21. Ibid., H 10262; see McCollum at H 10264 and Bryant at H 10266.
23. Ibid., 10263.
24. Ibid., 10266.
25. See, e.g., Representative Jim Moran (D-Va.), ibid., H 10258.
26. Ibid., H 10253.
27. Ibid., H 10266.
28. Ibid., H 10265.
29. Ibid., H 10271.
30. See, e.g., Reps. Bryant and Schiff, ibid., H 10267.
31. Ibid., H 10275.
36. Interview, October 1997, Syracuse, NY.
41. Letter from U.S. Sentencing Commission to Chairman Coble and Ranking Member Scott, April 19, 2005. The letter was in response to H.R. 1528, a bill that would increase penalties for underage drug offenders.

Chapter Six

1. State v. Russell, 427 N.W.2d 886 (Minn. 1991), a case decided by the supreme court of Minnesota that held more severe penalties in crack cases to be a violation of the state’s constitution. The invalidated law, it should be noted, was much more draconian than the federal legislation. Possession of 3 grams of crack could carry a penalty of twenty years in prison, while the same amount of powder could bring up to five years. The trial court found that 97 percent of those convicted for possessing crack were Black, while nearly 80 percent of those convicted of powder were White. The state supreme court upheld a lower court decision that there was no real distinction between the dangers posed by the two drugs.
2. 488 U.S. 371 (1988). John Mistretta, under indictment for a cocaine sale, claimed that Congress’s decision to create an administrative body to set sentences violated the separation-of-powers principle and delegated excessive authority to an administrative body. The Court decided against Mistretta in an 8 to 1 decision, Justice Scalia dissenting. For the majority, Congress was well within its powers, and the delegation made sense in view of the complexity of the sentencing problem: “Developing proportionate penalties for hundreds of different crimes by a virtually limitless array of offenders is precisely the sort of intricate, labor-intensive task for which delegation to an expert body is especially appropriate.” 488 U.S. at 379.
6. Ibid.
7. Ibid.
9. Ibid.
10. United States v. Clary, 361 F.3d 791 (5th Cir. 1999).
11. Ibid., 361 F.3d 791 (5th Cir. 1999).
12. Ibid., 361 F.3d 791 (5th Cir. 1999).
13. Ibid., 361 F.3d 791 (5th Cir. 1999).
14. Ibid., 361 F.3d 791 (5th Cir. 1999).
16. Ibid.
17. Ibid.
19. Ibid.
discovery motion because "judicial vigilance" is necessary in drug prosecutions: "The extraordinary severity of the imposed penalties and the troubling racial patterns of enforcement give rise to a special concern about the fairness of charging practices for crack offenses." 517 U.S. at 460.

23. October 11, 1995, memo addressed to "Persons Interested in Crack Cocaine Sentencing," no page number, on file with the National Association of Criminal Defense Lawyers, Washington, DC.

24. Judge Harold Greene has been most consistent in criticizing Congress and the Sentencing Commission for the Guidelines and mandatory minimums. He was one of the judges who declared the Guidelines unconstitutional before the Supreme Court had upheld them in Mistretta. A few years later, in United States v. Brehmcurz, 692 F. Supp. 1:277 (D.D.C. 1988), he criticized Congress for the shift in sentencing authority from judges to prosecutors.

25. The authors of the letter to Judge Weinstein were Bob Michel, Newt Gingrich, Dick Armey, Henry Hyde, Bill McCollum, Tom DeLay, Duncan Hunter, and Bill Paxton. Letter to Hon. Jack B. Weinstein, April 26, 1993.

26. As Cover noted with some exaggeration, other choices were available to them besides reluctant acceptance of an unjust law. Judges could have disregarded the law in favor of conscience, they could have resigned, or they could have evaded the full effect of legal rules without challenging the law directly.

27. 7 F.3d 1506 (10th Cir. 1993), cert. denied, 510 U.S. 1070 (1994).

28. 7 F.3d at 1510.


30. 27 F.3d at 679.

31. 64 F.3d 1427 (9th Cir. 1995).

32. Ibid., 1432.

33. 965 F.2d 65, (D.C Cir. 1992).

34. Ibid., 70.

35. 29 F.3d 733 (1st Cir. 1994).

36. Ibid., 741.


39. Ibid., 1490.


43. Ibid., 111-12.


45. See, e.g., United States v. Buchanan, 909 F. Supp. 99 (N.D.N.Y. 1995); "Defendant derives this novel argument from US. v. Davis... After careful deliberation, the Court declines to follow Davis," Ibid., 100.

46. United States v. Latimore is the exception. Senior Judge Bright, dissenting from the court of appeals decision, found Judge Rosenbaum's arguments persuasive and suggested that the racially disparate impact of the Sentencing Guidelines should be considered as a mitigating factor in crack cases.


50. See Gerstmann 1999, Dean Christopher Edley has argued similarly that the Court has "sucked much of the life from Brown" in favor of an anti-classification principle that can prevent affirmative action efforts. A. Wade Smith Memorial Lecture, April 19, 2005, Arizona State University.


53. Ibid., 242.

54. Since the Davis case, these statutory-based cases have become an important source of protections for plaintiffs complaining of race, sex, and now age discrimination from employers. A recent case announced that deliberate discrimination is not necessary in cases brought under the federal Age Discrimination in Employment Act (ADEA), Public Law 90-202, U.S. Statutes at Large 81 (1967): 502. It is enough to show harm because of a policy that went beyond "reasonable" business considerations. Smith v. City of Jackson, Mississippi, 544 U.S. 228 (2005), affirming 351 F.3d 183 (5th Cir. 2003).

55. 426 U.S. at 229.

56. Ibid.

57. 183 U.S. 537 (1896).


Epilogue


2. Members of Congress critical of the mandatory minimums have taken chairships of the Judiciary Committee in each chamber. Senator Jeff Sessions chairs the Senate Judiciary Committee, and Representative John Conyers Jr. chairs the House committee.

3. The issue of whether federal district judges are still obligated to follow the Guidelines in sentencing crack defendants, however, has divided the federal circuits and is currently under appeal in the U.S. Supreme Court in Claiborne v. United States, No. 06-5688, on writ of certiorari from the U.S. Court of Appeals for the Eighth Circuit.