

COMMENT: The War on Drugs and America's New Jim Crow

Nicole McMahan, Florida State University

Abstract

Although the Jim Crow laws that legalized racial segregation are a thing of the past, the United States' "War on Drugs" enforces a less obvious form of racial discrimination. Sentencing for crack and cocaine are vastly different despite the similar harms caused by those drugs, and it seems no accident that crack laws (often attributed to black users) are stricter than cocaine laws (attributed to white users). Jim Crow and the War on Drugs may seem unrelated on the surface, but in reality they both highlight the ongoing discrimination faced by racial minorities and the poor in the U.S. This article considers the social background of crack and cocaine laws and outlines the need for further research on this issue.

The United States has progressed since the era of Jim Crow, but racial discrimination continues to plague federal and domestic policies. Jim Crow laws, from 1877 to the 1950s, enforced strict legislation that kept blacks and whites separate. These laws required racial segregation in education, transportation, and even public restrooms (Brittanica Academic Edition, n.d.). Although such segregation was eventually abolished and Jim Crow laws were disbanded, racial discrimination persists in a variety of current laws. These more subtle, often hidden "modern Jim Crow laws" manipulate modern legislation to create racial separation and give privileged treatment to whites from higher socio-economic backgrounds. At the same time, they enforce different treatment (such as harsher punishments for drug crimes) for racial minorities from lower socio-economic backgrounds.

The history of the United States is filled with various wars against drug use – Reefer Madness, the alcohol prohibition, the battle against opiates after World War II – and the modern “War on Drugs” places much emphasis on narcotics. While many people think of cocaine legislation as nothing more than criminal deterrence and punishment for offenders, I argue that further analysis highlights underlying issues when it comes to American drug laws. In particular, differences in sentencing for crack versus cocaine crimes can be directly attributed to discrimination. Crack and cocaine share many similar biological and physical properties, but this discussion focuses on differences in demographics; cocaine is largely attributed to white drug users, while crack is most commonly attributed to minority (particularly African-American, or black) users. While some scholars contend that drug laws focus primarily on low economic levels rather than specific racial groups (Sklinksy, 1995), it cannot be ignored that black defendants are charged with and convicted of drug crimes at much higher rates than whites. More research is needed to better understand the unequal treatment of crack and cocaine users in the United States, as well as to establish methods that can fight drug use and addiction without bias.

Both cocaine and crack (which is derived from cocaine) are highly harmful and addictive narcotics. Cocaine is a stimulant that is characterized by increased alertness, excitation, euphoria, pulse rate, blood pressure, insomnia, and weight loss. The substance is highly addictive and users commonly fall into a pattern of abuse. Crack is known on the street as the poor man’s cocaine. When cocaine is cooked down in a mixture of sodium bicarbonate and water, it is then hardened and becomes crack. While a person may become addicted to cocaine over time, an individual can potentially become addicted to smoking crack in as little as a few weeks. Both drugs create a psychological addiction and illicit withdrawal symptoms when use abruptly stops (Abadinsky, 2014).

Because both cocaine and crack are similarly harmful, it stands to reason that they would possess similar legal consequences for usage or selling, yet this is simply not the case. There are two basic crimes associated with all narcotics: possession and trafficking. In 1986, the United States enacted

a minimum sentence of five years for trafficking 500 grams or more of powder cocaine. If caught trafficking 5,000 grams or more of cocaine, the minimum sentence is ten years. Simple possession of 500 grams of powder cocaine results in a minimum of five years' incarceration. On the other hand, crack charges are much stricter compared to cocaine. To reach the sentence of five years for trafficking crack, a dealer only has to be caught with five grams of the substance versus the 500 required for cocaine. In order to reach a ten year sentence for crack, an individual would need to be found with 50 grams of crack versus the 5,000 necessary to be convicted for trafficking cocaine. To be charged with possession and sentenced to a minimum of five years, an individual only has to have 28 grams of crack on them; this is significantly less than the minimum of 500 grams necessary for cocaine possession (United States Sentencing Commission, 2007).

The disparity in numbers becomes even more alarming when it becomes clear that there are distinct social divides between cocaine and crack: race and socio-economic status. Sklansky (1995) argues that not only are crack sentences much more lengthy than sentences for cocaine charges, but also that these laws are racist and target African Americans. Sklansky (1995) writes: "Thousands of federal prisoners, including a few I helped prosecute, are currently serving long mandatory sentences for trafficking in crack cocaine. Nine out of ten of them are black" (p. 1283). Despite international human rights frameworks that guarantee freedom from discrimination, as well as equal protection doctrines within U.S. law, I believe there is a strong correlation between harsh crack laws and racial discrimination. Cocaine, which is more frequently used and sold by whites, leads to fewer charges and convictions due to unequal laws and police enforcement. A white person who is suspected of cocaine possession is less likely to be arrested than a black person suspected of crack possession, for example, while a white defendant charged with a cocaine-related crime is less likely to be convicted than a black defendant charged with a crack-related crime. It is also clear that economic status plays a role in the U.S. War on Drugs. Stuntz (1998) writes that cocaine and crack dealers operate on "upscale" and

“downscale” markets. Because of the cost and purity of cocaine, cocaine dealers operate on an upscale market and attract wealthier customers of higher socio-economic status. In comparison, crack is a cheaper alternative to cocaine that attracts those at or below the poverty level. More research is needed to fully understand the role that race and class discrimination play in drug laws, but we know enough to realize that there is a problem that requires attention. Put simply, racial minorities and the poor are being treated differently than more privileged parts of U.S. society when it comes to drug enforcement.

We must also recognize the damage that has already been done to those sentenced to harsh sentences for crack crimes; the incarceration of non-violent drug abusers does nothing to stop the cycle of drug abuse or better society as a whole. Other methods of preventing drug abuse need to be considered if society is to move forward. While incarceration removes an individual from society and may help the short-term goal of reducing crime in the community, long-term prison does not change or rehabilitate people. The only way to ensure improvement of the nation’s drug problem is to change the individuals involved. For instance sentencing drug users to involvement in therapeutic communities instead of prison could be an effective model for treatment. In such programs, individuals would be in a drug-free community where they could focus on lifestyle changes, increasing positive attitude and positive behaviors, and begin to lay a foundation for themselves toward becoming a functioning member of society. This model could make what was once a locked-away, separated part of our society a working piece once again (Abadinsky, 2014).

In conclusion, it is clear that differences in U.S. drug laws – specifically cocaine versus crack laws – are creating unfair differences along racial and socio-economic lines. In order to remedy this problem, more research is necessary to better understand the problem and to inform better policy decisions. Federal drug laws must assure that people are treated as equals before the law, and that the right to freedom from discrimination is respected. Additionally, the United States should consider limiting

incarceration for non-violent drug offenders and considering other options, including treatment and therapy, to help break the cycle of drug abuse. These issues must be taken serious by the U.S. government if it hopes to ever win its War on Drugs.

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