

Charting Race and Class Differences in Attitudes Toward Drug Legalization and Law Enforcement: Lessons for Federal Criminal Law

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America's drug problem manifests itself in many ways. Illegal drugs are linked to high crime levels, high imprisonment rates, and wasted lives. The harms associated with drugs and drug law enforcement disproportionately affect African Americans. Increasingly the answer to the drug problem is presented in terms of a debate between the supporters of tough drug-law enforcement policies, which focus on long sentences for drug offenders, and opponents who reject tough sentences as too costly for the African American community.¹

Those who support tough sentences for drug offenders

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1. The term "community" often has a geographical connotation that emphasizes physical proximity of individuals. Here, however, I intend a much broader notion of community that draws upon the idea of connections among individuals based on consensual group identity and similarity of experience. This notion of community defies geographical containment. A broad notion of community is critically important to the analysis of the problems posed in this paper because group identity can begin to explain attitudes of individuals even when those individuals do not have the same set of experiences. When group identity is strong, the experiences of one individual in the group are sometimes very important to all of the members of that group. For a persuasive theoretical and empirical explanation of the broad community notion I describe here, see MICHAEL C. DAWSON, *BEHIND THE MULE: RACE AND CLASS IN AFRICAN-AMERICAN POLITICS* 75-84 (1994) (explaining the concept of "linked fate").

argue that policies distinguishing between drugs typically sold and consumed in devastated inner-city communities and those sold and consumed in well-off suburbs actually benefit inner-city residents.² The federal sentencing policy for cocaine offenses is an example. According to federal statute, a given amount of cocaine base or "crack" cocaine triggers the same mandatory penalties as 100 times as much powder cocaine.³ Those who reject tough sentencing policies counter that they are draconian and ineffective.⁴ Though advocates on both sides of this important issue contend that their positions reflect the sentiments of the

2. See, e.g., Randall Kennedy, *Changing Images of the State: Criminal Law, and Racial Discrimination: A Comment*, 107 HARV. L. REV. 1255, 1278 (1994) ("disparities . . . may be the mark, not of a white-dominated state apparatus 'discriminating' against blacks, but instead, of a state apparatus responding sensibly to the desires of law-abiding people—including the great mass of black communities—for protection against criminals preying upon them"). Others have advanced similar views. See *Keep Tough Penalty Boost Sentence for Powder Cocaine*, MONTGOMERY ADVERTISER, Nov. 6, 1995, at 8A; Joseph Brown, *Break the Code of Silence on Black Crime: Defending Those Who Terrorize Black Communities Is Taking the Concept of Black Unity Just a Little Too Far*, TAMPA TRIB., Dec. 15, 1994, at 19; John J. DiIulio, Jr., *The Question of Black Crime*, PUB. INT., Sept. 22, 1994, at 3; Tom Morganthau, *The New Frontier for Civil Rights*, NEWSWEEK, Nov. 29, 1993, at 65; Susan Estrich, *Cries of Racism Miss Point on Prison Rates*, USA TODAY, Feb. 15, 1996, at 12A; Bill Johnson, *Reducing Crack Sentences Hurts Blacks*, DETROIT NEWS, Oct. 27, 1995 (opinion); Richard Matthews, *The Problem is Crime; Missing Point About Young Blacks in Prison*, ATLANTA J. & CONST., Oct. 12, 1995, at 10A (editorial).

3. See 21 U.S.C. § 841(b)(1)(A) and (B) (1994).

4. See, e.g., David Cole, *The Paradox of Race and Crime: A Comment on Randall Kennedy's Politics of Distinction*, 83 GEO. L.J. 2547 (1995) (criticizing federal crack cocaine sentencing disparities). See also *United States Sentencing Commission, Cocaine and Federal Sentencing Policy 207-12* (1995) (noting that federal public defenders and community defenders, the Probation Officers' Advisory Group, the Criminal Justice Policy Foundation, Families Against Mandatory Minimums, the National Association of Criminal Defense Lawyers, Citizens for the Rehabilitation of Errants, the Drug Policy Foundation, the American Bar Association, the American Civil Liberties Union, the Practitioner's Advisory Group, the National Rainbow Coalition, two federal judges, an Assistant United States Attorney, and 1,900 private citizens expressed concern about the 100-to-1 sentencing ratio or called for its discontinuation); Congressional Black Caucus, *Letter to the President* (Oct. 24, 1995) (urging President Clinton to veto a bill to overrule the Sentencing Commission's decision to scrap federal crack cocaine sentencing disparities).

African American community, empirical support for their respective positions is noticeably absent.⁵ I attempt to fill this gap by exploring survey opinion data that are pertinent to drug-law enforcement. Analysis of these data can inform and provide direction for policy decisions.

Experience shapes attitudes,⁶ and the experience of African Americans with both drugs and drug-law enforcement undeniably differs from that of non-African Americans. Although drug use is more prevalent among non-African Americans, disproportionate numbers of African Americans use illegal drugs. Moreover, disproportionate numbers of African Americans use illegal drugs more frequently than non-African Americans. The prevalence and frequency of illegal drug use among African Americans has worsened over time. National statistics for cocaine use are illustrative. In 1985 approximately 11.4% of current cocaine users were African American—a percentage very close to the proportion of African Americans in the population. But in 1988, African Americans comprised 15.3% of current cocaine users and 27.3% of frequent cocaine users.⁷ Surveys of drug use in 1991 indicate that 21.8% of current

5. Professor David Cole's critique of Professor Randall Kennedy's position is telling. Cole says, "[H]e [Kennedy] offers not one iota of evidence to support his claim. Instead, where one might expect to find evidence, one finds only a citation to the fact that some black citizens, like [Kennedy] himself, advocate even stricter law enforcement measures within the black community." See Cole, *supra* note 4, at 2563. Interestingly, Cole doesn't present much data either. He cites a Gallup poll suggesting that more African Americans than whites think that the criminal justice system is unfair. *Id.* at 2559 n.58. Cole also refers to the Rodney King beating incident, citing a Los Angeles Times reporter: "the inner city poor knew [the] beating of Rodney King was not an isolated incident because [m]ost people of color can recall such an incident happening to them or to a family member or neighbor." *Id.* at 2565 n.82. Professor Cole appears to meet Professor Kennedy's anecdotes with anecdotes of his own.

6. "There are three basic elements in the opinion-forming process: the person, his environment, and the interaction between the two." HARWOOD L. CHILDS, *PUBLIC OPINION: NATURE, FORMATION, AND ROLE* 110 (1965). Chapter Six of Professor Childs' book discusses formation of public opinion. See *id.* at 110-37.

7. See John P. Walters, *Race and the War on Drugs*, 1994 U. CHI. LEGAL F. 107, 135-36 (1994) (charts 23 & 24).

cocaine users were African American, and 41.2% of frequent cocaine users were African American.⁸

Like illegal drug use, drug-law enforcement disproportionately impacts African Americans as a group. A recent study indicates that in 1993, African Americans comprised 35% of those arrested for drug offenses, 55% of those convicted for drug offenses, and 74% of those who received prison sentences for drug offenses.⁹ The disproportionate impact of drug-law enforcement in the African American community also has increased over time.¹⁰ These statistics are just an outline of the reality that many individuals live. Many in the African American community must mediate the "dual frustration"¹¹ of living with problems associated with illegal drug use and marketing¹² and problems associated with tough drug-law enforcement.

African Americans are likely to hold views about drug-law enforcement policy that are distinct from the views of non-African Americans on this topic because so many in the African American community uniquely experience problems associated with both drugs and drug-law enforcement. With this in mind, I attempt to answer two questions with the

8. See *id.* at 137 (chart 25).

9. See MARC MAUER & TRACY HULING, *THE SENTENCING PROJECT, YOUNG BLACK AMERICANS AND THE CRIMINAL JUSTICE SYSTEM: FIVE YEARS LATER* 12 (Oct. 1995).

10. See chart 1 *infra* p. 148.

11. The Joint Center for Political and Economic Studies, a Washington think tank that specializes in issues relating to African Americans, recently released a poll regarding African American's general crime concerns. Katherine McFate, the associate director of research and social policy for the Center, summarized the poll's findings with the following statement: "I think these results reflect blacks being frustrated both with being crime victims and frustrated with the police [and the criminal justice system]." Michael A. Fletcher, *Study Tracks Blacks' Crime Concerns; African Americans Show Less Confidence in System, Favor Stiff Penalties*, WASH. POST, Apr. 21, 1996, at A11.

12. I distinguish the consequences of illegal drug use and illegal drug marketing because, while the problems may overlap, they are not always the same. For example, pharmacological harms associated with addiction may be thought of as problems associated with illegal drug use, while crime connected to open air drug markets may be thought of as consequences of illegal drug marketing. It is possible that some families experience problems of the first category without being substantially affected by the latter.

data presented here: (1) to what extent do Americans support very tough drug-law enforcement policy?, and (2) how different are African American views on drug-law enforcement from those of whites? My goal is not to provide support for one side or the other in the debate about the propriety of tough sentences for drug offenders. Rather, I seek to illuminate the discussion by probing the divisions in public opinion.

To answer the questions posed above, this study evaluates, along demographic dimensions, four analytically distinct drug-law enforcement positions held by public opinion survey respondents in 1987. The four positions are combinations of the two measures from the 1987 General Social Survey ("GSS"), an ongoing project of the National Opinion Research Center at the University of Chicago,¹³ that are most pertinent to attitudes toward drug-law enforcement. The first measure addresses attitudes concerning legalization of marijuana,¹⁴ and the second measure addresses attitudes concerning whether local courts should be more harsh on criminal offenders generally.¹⁵ Each of these

13. The General Social Surveys have been conducted almost every year since 1972. No surveys were conducted in 1979, 1980, or 1992. Each survey is an independently drawn sample of English-speaking persons, 18 years of age or over, living in non-institutional arrangements in the continental United States. See JAMES ALLAN DAVIS & TOM W. SMITH, *GENERAL SOCIAL SURVEYS, 1972-1994: CUMULATIVE CODEBOOK 1* (1994). The analysis presented here utilizes the 1987 General Social Survey because in that year the National Science Foundation funded an oversample of Blacks. See *id.* at 788. The number of Blacks in the sample is an important factor in determining statistically significant differences in opinion between groups. See HOWARD SCHUMAN ET AL., *RACIAL ATTITUDES IN AMERICA: TRENDS AND INTERPRETATIONS* 140 (2d ed. 1988) (noting that small samples of Blacks in national samples of 1500 to 2000 yields only 150 to 200 Blacks and leads to problems in sampling reliability). The 1987 oversample yielded an additional 353 Black respondents to the 191 already present in the regular cross-section. The total number of unweighted cases in the 1987 sample was 1819. In this analysis the oversampled Blacks are weighted so that the combined oversample and regular cross-section data are representative of the population. See DAVIS & SMITH, *supra*, at 791.

14. Respondents were asked, "Do you think the use of marijuana should be made legal or not?"

15. Respondents were asked, "In general, do you think the courts in this area deal too harshly or not harshly enough with criminals?"

measures is dichotomous, so four positions are possible. The position that combines views in opposition to legalization of marijuana and views in support of harsher courts for criminal offenders reflects a “get tough on drug offenders” outlook. A more “libertarian” view is captured by the combination of views in support of legalization of marijuana and views in support of more harsh local courts for criminal offenders. The views of those who strongly experience the “dual frustration” referred to earlier are probably best reflected by the combination of views in opposition to legalization of marijuana and views in opposition to harsher courts for criminal offenders. Finally, a fourth position combines views in support of legalization of marijuana and views in opposition to harsher courts for criminal offenders and reflects the attitudes of those who hold “anti-law enforcement” views.

Figure 1 illustrates the four drug-law enforcement positions.

Figure 1

		Favor Legalization?	
		No	Yes
Favor More Harsh Courts?	Yes	Get Tough	Libertarian
	No	Dual Frustration	Anti-Law Enforcement

In order to probe how differences in experiences with drugs and drug-law enforcement among groups can produce different attitudes toward drug-law enforcement policy, this study analyzes survey data with reference to these four positions against the backdrop of imprisonment rates for drug offenders.

The results of this analysis can be summarized with

four points. First, in 1987 there were important differences between African Americans and white Americans along the four analytically distinct drug-law enforcement positions.¹⁶ Second, the opinions of African Americans with respect to the enumerated drug-law enforcement positions were hardly monolithic; rather, there were important differences in opinion within the African American community with respect to the four enumerated drug-law enforcement views.¹⁷ Third, while most respondents' views conformed to the "get tough" position, the data indicate that the views of African Americans were less likely to conform to the "get tough" position than those of whites.¹⁸ Fourth, and finally, African Americans surveyed in 1987 were much more likely to exhibit ambivalence in their views about drug-law enforcement than whites.¹⁹ When African American views departed from the extremes of the "get tough" position or the "anti-law enforcement" position, these views were more likely than those of whites to be consistent with *either* the "dual frustration" position *or* the "libertarian" position.

I believe these empirical findings demonstrate the complexity of the social context that African Americans experienced when they were surveyed in 1987 and that African Americans continue to experience. Moreover, as I explain below, these findings indicate a need for more diverse and imaginative policy and programmatic responses to the drug problem.

The analysis of these findings proceeds in three sections. The first section offers a two-level analysis of the data. First, simple descriptive statistics are used to outline the differences in opinion about drug-law enforcement between African Americans and whites and respondents with and without a high school education. Then, the distinctions

16. See table 1 *infra* p. 145.

17. See tables 2 & 3 *infra* pp. 152, 153 (revealing class and gender differences in opinion among racial groups).

18. See table 1 *infra* p. 145 (indicating that 78.5% of whites supported the "get tough" position compared to 71.3% of African Americans).

19. See *infra* text accompanying notes 48-56 (explaining this ambivalence through statistics).

revealed by the simple statistics are refined with a more sophisticated statistical procedure. The second section offers an interpretation of the results presented in section one, and it suggests some policy prescriptions. The third section is a technical appendix that offers detailed explanations of the data sets analyzed and statistical procedures employed in the analysis.

I. ATTITUDES TOWARD LEGALIZATION AND LAW ENFORCEMENT

This analysis is exploratory. My goal is to assess the views of the people most likely to be affected by problems associated with both the drug trade and drug-law enforcement and compare these views to the views of those who are less likely to be affected by such problems. Analysis of GSS data along dimensions such as race, education level, and sex with respect to the four drug-law enforcement positions laid out at the beginning of this piece provides some clues about the ways that the different experiences of groups affect their attitudes about drug-law enforcement policy.

This analysis focuses on GSS data collected in 1987. Data from the 1987 survey are useful to analyze because of the survey's close proximity to the passage of the Anti-Drug Abuse Act of 1988,²⁰ a major piece of federal legislation providing enhanced penalties for drug trafficking and focusing on particularly harsh sentences for crack cocaine trafficking.²¹ Assessing opinions collected in 1987 offers a glimpse of the national level of support for "get tough" drug-law enforcement policy immediately prior to the pas-

20. Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690, 102 Stat. 4181 (codified as amended in scattered sections of U.S.C.).

21. It is important to note here that this analysis seeks to test levels of public support for tough drug-law enforcement measures such as the Anti-Drug Abuse Act of 1988 with GSS measures that do not refer directly to such laws. The most pertinent measures in the GSS address legalization of marijuana and harsher local courts for criminal offenders generally. Thus, there are undoubtedly biases in these measures. For a more complete description of these biases, see part III *infra* (technical appendix).

sage of the law.²²

Table 1

Frequency (%) of Response

Group Surveyed	Get Tough	Libertarian	Dual Frustration	Anti-Law enforcement	N
All	77.6	14.3	5.4	2.8	1702
Blacks	71.3	14.0	11.7	3.1	228
Whites	78.5	14.7	4.0	2.8	1475
	t=6.529	t=0.136	*t=23.53	t=0.044	
<H.S.	81.7	9.0	7.5	1.8	453
>H.S.	76.1	16.1	4.6	3.1	1311
	***t=7.820	***t=12.03	*t=3.959	t=1.730	

NOTES:

The level of significance is calculated using a t-test.

*(significant at .05 level or better)

** (significant at .01 level or better)

*** (significant at .001 level or better)

Table 1 indicates that a majority of GSS respondents favored the "get tough" drug-law enforcement position in 1987. GSS data also indicate that a majority of African American and white survey respondents supported the "get tough" position. However, the data show that compared to whites, a lower percentage of African Americans supported the "get tough" position in 1987. The difference is statistically significant at the 1% level.²³ Table 1 reveals some additional interesting differences among groups surveyed in 1987.

Perhaps the most interesting difference between the African Americans and whites surveyed concerns responses falling into the "dual frustration" category. Only 4% of whites sampled simultaneously opposed legalization of

22. The relationship between public opinion and public policy is, of course, complex. Opinion influences policy, and policy influences opinion. For more on this process, see CHILDS, *supra* note 6, at 309-19; William J. Chambliss, *Crime Control and Ethnic Minorities: Legitimizing Racial Oppression by Creating Moral Panics*, in ETHNICITY, RACE, AND CRIME: PERSPECTIVES ACROSS TIME AND PLACE 235-58 (Darnell F. Hawkins ed., 1995).

23. The probability that a difference this large would occur through sampling variation alone is less than one in a hundred.

marijuana and more harsh sentences for criminal offenders, but almost *three times* as many African Americans did so. The probability that a difference this large would occur by chance is less than 1 in 10,000. The difference in African American and white support for the "dual frustration" drug-law enforcement position provides some support for the hypothesis that different experiences with drugs and drug-law enforcement produce different opinions about drug-law enforcement.

Table 1 also lists interesting differences in opinion between individuals with less than a high school education and those with more than a high school education. First, Table 1 indicates that survey respondents with less than a high school education in 1987 were more likely to subscribe to the "get tough" position than were those with more education.²⁴ Second, respondents with a high school education and those without differed most significantly in their respective support for the "libertarian" position. In 1987, individuals with less than a high school education were much less likely to favor both legalization of marijuana *and* harsher sentences for criminal offenders than individuals with more education. Third, the data indicate that when less educated individuals departed from the "get tough" position, they departed in favor of less harsh sentences for criminal offenders, i.e., the "dual frustration" position.

In summary, a preliminary look at the data with simple statistics reveals support among a majority of Americans for a drug-law enforcement position in 1987 that reflects a "get tough" stance toward drug offenders. These preliminary results also point to some important differences among subgroups of Americans. However, it is likely that the precise nature of the differences in views about drug-law enforcement among subgroups of Americans surveyed are obscured by the summary nature of the procedures employed in Table 1. Undoubtedly, the experiences of African Americans with drugs and drug-law enforcement

24. The difference in levels of support for this position between the two groups is statistically significant at .006.

are not homogeneous. Similarly, the experiences with drug and drug-law enforcement of those with less than a high school education are undoubtedly diverse. The heterogeneity of experiences is due, in part, to the complexity of the interaction between race and class.

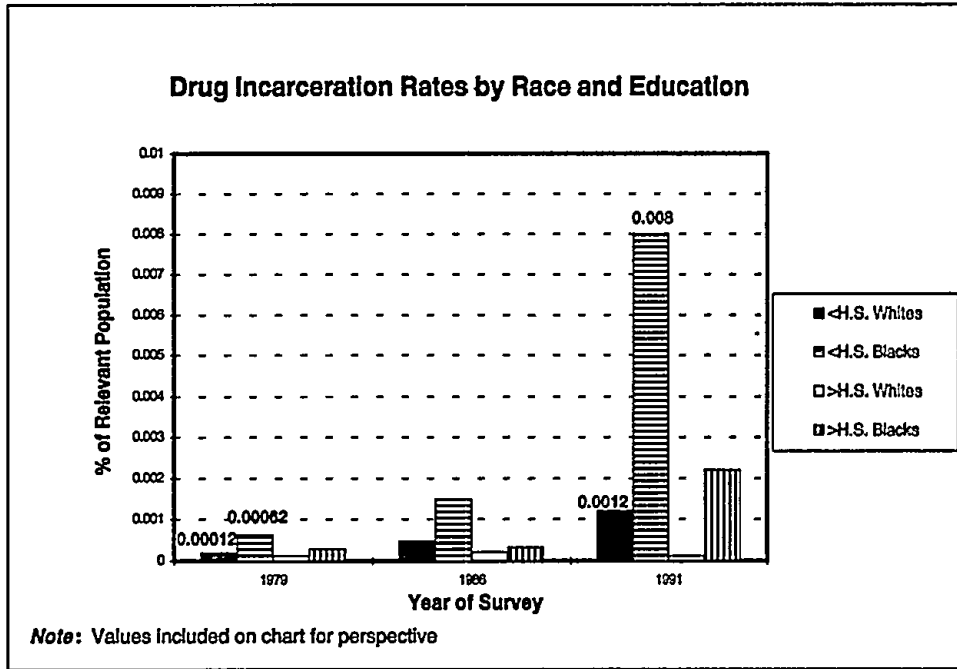
For example, consider the impact of drug-law enforcement by race and education level. Chart 1 demonstrates that the least educated African Americans have experienced the highest incarceration rates for drug offenses in each year that the data underlying the chart were collected.²⁵ While the least educated white Americans certainly experienced much higher incarceration rates in both 1979 and 1986 than more educated white Americans, in no survey year did the incarceration rate of the least educated white Americans exceed that for either group of African Americans.²⁶

25. See part III *infra* (technical appendix) for a description of the data underlying chart 1 and an explanation of the construction of the incarceration rates displayed in chart 1.

26. The table below includes the data in chart 1:

Drug Offense Incarceration Rates				
	<H.S. Whites	Blacks	>H.S. Whites	Blacks
1979	0.00018204	0.00061878	4.9966E-05	0.00035428
1986	0.00033888	0.00139412	6.7221E-05	0.00041309
1991	0.0012305	0.00792516	0.00017518	0.00209945

Chart 1



Also consider the diverse experiences with drug use and marketing of African Americans and whites from varied socioeconomic groups described in sociological research and in journalistic accounts. Professor William Julius Wilson relies on data from a 1993 survey of two high-jobless neighborhoods on Chicago's south side to document experiences of individuals who face daily a high prevalence of drug activity in their neighborhoods. One respondent surveyed said, "More people are dying and being killed There are many drugs sold here every day. It's unsafe and you can't even go out of your house because of being afraid of being shot."²⁷ Another stated, "I stay home alot. Streets are dangerous. Killings are terrible. Drugs make people crazy."²⁸ Yet another stated that some poor residents in his neighborhood, "get depressed, drink, snort, break in other people's houses. Borrow, get on aid, whore—that

27. WILLIAM JULIUS WILSON, WHEN WORK DISAPPEARS: THE WORLD OF THE NEW URBAN POOR 59-60 (1996).

28. *Id.* at 60.

means prostitute."²⁹

Though Wilson's work captures relatively recent experiences of poor African Americans, work by others indicates that the prevalence of drug activity and the violence associated with it has been a problem in Chicago for quite some time. For example, Alex Kotlowitz's journalistic account of the ways in which drug trafficking by gangs in a public housing project in Chicago detrimentally affected the lives of two young, African American boys growing up there indicates that the drug-related problems of poor, minority communities Wilson documents have persisted at least since 1987.³⁰

Residents of communities outside poor, inner-city neighborhoods also experience problems associated with drug use, but the picture that journalistic accounts produce of these experiences is very different from the interview excerpts that Wilson provides. The story of the Mannatt family in Atlanta, Georgia is a good example.³¹ In 1976, after their thirteen-year-old daughter's birthday party, the Mannatts discovered empty bottles of Mad Dog (a fortified wine beverage) along with marijuana "roaches" (butts of marijuana cigarettes) in their back yard. The Mannatts and several other parents formed the Nosy Parents Association in an attempt to stem teen drug use. One goal of the group was to seek and promote stiffer drug laws and increased drug-law enforcement.

Both residents of middle-class communities, such as the Mannatts, and residents of the jobless ghettos may be very likely to support "get tough" policies. However, it should be very obvious that the impetus for their support is very different. Their different experiences could produce different ideas about the appropriate level of severity of punishment for drug offenders, the prevalence of drug-law enforcement, and who among offenders should be targeted.

29. *Id.* at 58.

30. See ALEX KOTLOWITZ, *THERE ARE NO CHILDREN HERE: THE STORY OF TWO BOYS GROWING UP IN THE OTHER AMERICA* (1992).

31. See Eric Schlosser, *Reefer Madness*, *ATLANTIC MONTHLY*, Aug. 1994, at 45, 49-52.

Table 1 reveals some group differences in attitudes that may reflect different experiences, but Table 1 does not reveal the full complexity of these differences. For example, we cannot discern from the data presented in Table 1 the differences in attitudes between the least educated African Americans on the one hand, a population that is very likely to experience very deeply problems associated with drugs and drug-law enforcement, and more educated non-African Americans on the other. A logit loglinear model was used to make more refined distinctions among groups.³² This statistical technique is used to explain variation of data in cases in which the dependent variable is categorical rather than a continuous interval-level variable.³³ The tables that follow present first estimates³⁴ of urbanization,³⁵ race,³⁶ educational attainment,³⁷ gender, and age³⁸ on support

32. For a detailed explanation of the model employed in this analysis, see part III *infra* (technical appendix).

33. For a very accessible explanation of logit models, see SCHUMAN ET AL., *supra* note 13, at 217-22.

34. Each estimate is a log odds ratio. For example, the fact that the estimate for "Large Metropolitan Area" in Table 2 is 0.24 indicates that the odds that an individual from a large city will support legalization are 1.27 times the odds that an individual from a smaller city will do so. In the Tables that follow, z-scores appear below the estimate. A z-score of 2 represents an estimate that is significant at the .05 level.

35. Urbanization is represented by the estimate for "Large Metropolitan Area," which refers to the 100 largest American cities.

36. African Americans are contrasted with whites.

37. In this analysis educational attainment serves as an indicator of socioeconomic class. Social science research indicates that educational attainment is a very good proxy for socioeconomic class. SIDNEY VERBA ET AL., *VOICE AND EQUALITY: CIVIC VOLUNTARISM IN AMERICAN POLITICS* 282-83 (1995). Whether or not the respondent has a high school degree (those with general equivalency diplomas (G.E.D.s) are collapsed with those without high school degrees) is a categorical indicator of whether the respondent falls into the lowest socioeconomic class. Although educational attainment clearly is continuous, the attainment of a high school degree often marks a significant change in socioeconomic status. For an excellent description of the difference between a gradational and a categorical conception of class, see Deborah C. Malamud, *Class-Based Affirmative Action: Lessons and Caveats*, 74 *TEX. L. REV.* 1847, 1863-66 (1996).

38. Respondents who were 30 and over at the time of the survey are contrasted with those who were between 18 and 30 years old.

for legalization and then for support for less harsh courts for criminal offenders generally. Note that although the estimates are presented in separate tables, the estimates were produced with the single model described in the Technical Appendix.

Table 2: Logit of Positive Response to Legalization of Marijuana

Variable	Support for Legalization	Comment
Large Metropolitan Area	.24 (2.7)	City dwellers are more likely to favor legalizing marijuana.
African American	-.21 (-1.9)	When compared to white Americans African Americans are less likely to favor legalizing marijuana.
Less than high school degree	-.26 (-2.7)	Poorly educated Americans are less likely to favor legalizing marijuana.
Men	.26 (3.5)	Men are more likely to favor legalizing marijuana than women.
Young Americans	.38 (4.6)	Americans who are less than thirty years of age are more likely to favor legalizing marijuana.
Constant	-1.3 (-10.2)	Most Americans do not support legalizing marijuana.

Model Fit

Chi Square	Degrees of Freedom	<i>p</i>
Pearson = 73.4	78	.63
Likelihood Ratio = 75.1	78	.58

The constant for the model indicates that most Americans did not favor the legalization of marijuana in 1987,³⁹ and there are important variations from this view which are tied to the explanatory variables in Table 2.

For example, Americans who lived in one of the 100 largest metropolitan areas were more likely to favor the legalization of marijuana than Americans who live in smaller locales.⁴⁰ Additionally, survey respondents without a high school diploma were less likely to favor the legalization of marijuana than more educated Americans.⁴¹ Thus, the model shows that Americans likely to be in the lowest socioeconomic class were less likely to favor legalization than Americans in higher classes. The estimates above can be combined to illustrate the ways in which attitudes about legalization vary by race and educational attainment for Americans. The variations by race and level of education are presented in Table 3.

Table 3: Variation in attitudes regarding legalization for urban-dwelling men over 30

<u>African American</u>	<u><H.S. diploma</u>	<u>Effect</u>	<u>Total</u>
No	No	-1.3+.26+.24	-0.8
No	Yes	-0.8+(-.26)	-1.06
Yes	No	-0.8+(-.21)	-1.01
Yes	Yes	-0.8+(-.26)+(-.21)	-1.27

39. $\lambda = -1.3$, $z = -10.2$.

40. $\lambda = .24$, $z = 2.7$.

41. $\lambda = -.26$, $z = -2.7$.

The difference in odds for each combination of race and level of education is simply the difference between the final scores. For example, starting from a baseline of men over 30 who lived in one of the largest 100 metropolitan areas in 1987, we can compute how the tendency to favor legalization varies by race and level of education. Whites with more than a high school education were 1.23 times more likely to favor legalization than African Americans with more than a high school education. More educated, city-dwelling whites were 1.6 times more likely to favor legalization of marijuana than the least-educated, city-dwelling African Americans. We can also add the estimates for sex and age to the equations above. These estimates indicate that women tended to oppose legalization of marijuana in 1987, while younger Americans tended to support it. Thus, the least educated African American women were the least likely of all city-dwelling Americans to support legalization of marijuana in 1987. The perspective of African American women on this issue no doubt reflects the unique context in which city-dwelling, African American women live.

Attitudes toward legalization of marijuana provide important information about what survey respondents think about drug-law enforcement generally, but the data do not provide a complete picture. Analysis of attitudes about the propriety of harsher local courts for criminal offenders provides additional and important information about the level of support among groups, including African Americans, for stiff penalties for drug offenders.

Table 4 is a model of attitudes toward court punitiveness.

Table 4: Logit of Positive Response to Less Harsh Courts for Criminal Offenders

Variable	Support for Less harsh courts	Comment
Large Metropolitan Area	-0.8 (1.0)	The association between living in a city and punitiveness is insignificant.
African American	.19 (1.8)	Compared to white Americans, African Americans tend to be non punitive.
Less than high school degree	.01 (.12)	The educational attainment and punitiveness is insignificant.
Men	.15 (2.1)	Women are more punitive than men.
Young Americans	.01 (.06)	The association between age and punitiveness is insignificant.
Constant	-1.2 (-8.8)	Most Americans are punitive.
Model Fit		
Chi Square	Degree Of Freedom	<i>p</i>
Pearson = 73.4	78	.63
Likelihood Ratio = 75.1	78	.58

Table 4 indicates that the most significant differences among the individuals who were questioned in 1987 about the harshness of local courts on criminal offenders occurred along sex and race categories. Both men and African Americans were more likely to think that courts should be less harsh on criminal offenders than women and white Americans. The parameter for race in the model indicates that the odds of African Americans in 1987 favoring less harsh local courts for criminal offenders were about 1.21 times the odds of white Americans doing so.⁴² Likewise, male support for less harsh courts for criminal offenders in 1987 outweighed female support for less harsh courts. Again, it is likely that these variations importantly reflect the survey respondent's social context. Note that the estimates indicate that African American men were the most likely of all groups to favor less harsh local courts for criminal offenders. No doubt these estimates reflect the unique experience of African American men with an institution that looms large in their lives—the criminal justice system.

II. INTERPRETING THE RESULTS

The empirical analysis in this paper confirms that a majority of Americans, African American and white, supported a "get tough" position on drug-law enforcement in 1987, the year before the 1988 Anti-Drug Abuse Act was passed. But even though the data indicate that a majority of African Americans supported a "get tough" position, the data also show that they did so at a much lower rate than whites did. This result is especially intriguing in light of the relative levels of support for the "get tough" position among respondents with and without a high school education.

The data in Table 1 indicate that in 1987, individuals with less than a high school education selected the "get tough" position at a higher rate than individuals with more education. Individuals without a high school education are

42. $\lambda = 0.19$, $z = 1.8$.

more likely than individuals with a high school degree to occupy a low socioeconomic status and be poor.⁴³ Poor individuals are more likely than wealthier ones to be victimized by crime,⁴⁴ so it is likely that poor individuals are more likely than wealthier ones to experience crime and other problems associated with drugs. Thus, we should not be surprised to learn that the GSS data show that respondents without high school degrees supported tougher measures for drug offenders at a *higher* rate than more educated individuals in 1987.

Now consider African Americans. In 1986, approximately 1 out of 3 African American families lived in poverty—a rate three times the poverty rate for white families that year.⁴⁵ Moreover, the 1987 GSS data indicate that proportionately fewer African Americans had high school degrees than whites.⁴⁶ Because poverty is more prevalent among African Americans than it is among whites, we can hypothesize that African Americans as a group should experience more pervasive problems with drugs than whites as a group. Some have used similar reasoning to argue that African Americans would benefit from higher levels of support for “get tough” positions on drug-law enforcement.⁴⁷ These arguments are based on a simple proposition: groups that experience higher levels of criminal victimization should be more likely than groups that experience lower levels of victimization to support “get tough” approaches to crime. However, the data presented here are

43. See *supra* note 37.

44. See SOURCEBOOK OF CRIMINAL JUSTICE STATISTICS at 234 (Kathleen Maguire & Ann Pastore eds., 1994) (table 3.9, showing that individuals with the lowest income suffer the highest rate of personal crime victimization).

45. See U.S. Department of Commerce, Statistical Abstract of the United States at 472 (1996) (table 730).

46. About 67% of the African Americans in the sample analyzed had less than a high school education compared to about 77% of whites. Poorly educated African Americans are more likely than poorly educated whites to be poor. About 34% of African Americans with less than a high school degree in the sample had incomes at or below the poverty line compared to about 23% of whites.

47. See *supra* note 2.

inconsistent with this proposition as applied to African American support for "get tough" approaches to drug-law enforcement. The data in Table 1 and the statistical model confirm that African Americans as a group were much *less* likely than whites to support a "get tough" position in 1987.

One possible explanation for the lower level of African American support for the "get tough" position is the fact that African Americans clearly experienced a high rate of drug-law imprisonment relative to whites in 1986. Indeed, African Americans experienced a high rate of imprisonment for drug offenses in absolute terms in 1986, and the data underlying Chart 1 show that the African American drug offense imprisonment rate was accelerating between 1986 and 1991. Thus, we might expect that to the extent that African Americans registered *less* support than whites for the "get tough" position in 1987, they registered *more* support for the "anti-law enforcement view." However, Table 1 indicates that in 1987, African Americans as a group favored the "anti-law enforcement" position at a rate that is statistically indistinguishable from the rate at which whites favored the position. The data in Table 3 are even more specific. African American men were the least likely to support harsher local courts for criminal offenders generally. This result is consistent with the hypothesis explained above. However, Table 3 indicates that African American men were *less* likely than white men to favor legalization of marijuana. This result, of course, is inconsistent with the "anti-law enforcement" view.

The data show that African American men were ambivalent about drug-law enforcement in 1987. In fact, the data show that as a general matter, African Americans were more ambivalent than whites in 1987 about drug-law enforcement. Most Americans surveyed in 1987 who believed that the courts should be less punitive also believed that marijuana should be legalized. Alternatively, Americans who believed that marijuana should not be legalized also believed that the courts should be more harsh. I characterize both sets of views as noncomplex. Thus, noncomplex views are represented by the "get tough" and "anti-law

enforcement" positions. Compared to white Americans, however, the data show that African Americans tended to believe either that courts should be less harsh on criminal offenders and that marijuana should not be legalized, or they tended to believe that the courts should be more harsh on criminal offenders, while at the same time expressing a view that marijuana should be legalized.⁴⁸ I characterize these views as "complex." Complex views are captured by the "libertarian" and "dual frustration" positions. I believe the prevalence of complex views among African Americans concerning drug-law enforcement reflects the deeper experiences of African Americans with both drugs and drug-law enforcement in their communities.

In addition to pointing out that African Americans tend to support drug-law enforcement views that reflect the difficulties of negotiating the problems associated with both drugs and drug-law enforcement, the statistical analysis also helps to predict the demographic characteristics of the African Americans who tend to hold complex views. The signs on the estimates of the statistical model tell us quite a bit about the Americans who were the most deeply ambivalent about drug law enforcement in the 1987 survey. The "dual frustration" position is represented by estimates that are negative for legalization and positive for non-punitiveness. A review of those estimates indicates that respondents who selected the "dual frustration" position tended to be older, less-educated, African American women.

48. The statistical model used in this analysis quantifies this ambivalence. The model explained below in the Technical Appendix in Section III controls for the association between views on legalization and views on the harshness of courts. The log of the odds ratio of these views indicates that they are highly associated. The model also provides estimates for the effect of race, education, sex, etc. on the association between attitudes toward legalization and attitudes about the harshness of courts. Only the race effect is significant among the explanatory variables in the model ($\lambda = -.43$, $z = 2.0$). This race estimate represents the likelihood that respondent's views do not conform to the noncomplex drug-law enforcement viewpoints—the "get tough" and "anti-law enforcement" positions. The fact that the estimate is negative means that African Americans are more likely than whites to have views in off-diagonal cells. Thus the views of African Americans are more "complex." The z-score indicates that this estimate is significant.

Examination of the group of African Americans who posted views consistent with the "dual frustration" position⁴⁹ indicates that 64% of them were women; 34% of them had less than a high school education; 33% had incomes below the poverty line; and 74% of them were older than 30 when surveyed. The "libertarian" position is represented by estimates that are positive for legalization and negative for non-punitiveness. A review of those estimates reveals that "libertarian" respondents tended to be young, educated men. Examination of the responses of African Americans who supported this view in 1987⁵⁰ indicates that a majority of them were men; 81% had more than a high school education, and only about a quarter had incomes below the poverty line—the lowest percentage of any of the groups.⁵¹

Economist Glenn Loury points to a potential source of ambivalent feelings about these issues, explaining that "[t]he young black men wreaking havoc in the ghetto are still 'our youngsters' in the eyes of many of the decent poor and working-class black people who are sometimes their victims."⁵² That so many of the African Americans in the "dual frustration" category are women helps to flesh out Loury's statement concerning "our youngsters." There are only a few statistics to work from here, but the information concerning race, class, and sex provides a foundation for informed speculation. African American women in poor neighborhoods are torn. They worry about their young sons getting involved in gang activity. They worry about their sons possibly selling or using drugs. They worry about their children getting caught in the crossfire of warring gangs. In short, they worry about the very high levels of often drug-

49. Fourteen percent of African Americans surveyed held this view.

50. Approximately twelve percent of African Americans supported this position.

51. Twenty-seven percent of African Americans who supported the "get tough" position had incomes below the poverty line in 1987, while thirty-seven percent of those supporting the "anti-law enforcement" position did so. I should emphasize here, however, that there were only seven African American responses in the "anti-law enforcement" category.

52. Glenn C. Loury, *Listen to the Black Community*, PUB. INTEREST, Sept. 22, 1994, at 35 (commenting on article by John DiIulio, *supra* note 2).

related crime in their neighborhoods. These mothers want better crime control and law enforcement. Yet, they understand that increased levels of law enforcement potentially saddle their children with a felony conviction—a mark that can ensure economic and social marginalization.⁵³ Their ambivalence about these issues emerges in their simultaneous support for a criminal penalty for marijuana use, a level of support that surely underestimates their support for criminalization of other, harder drugs; and for *less severe* penalties for criminal offenders generally, a level of support that probably underestimates their support for less harsh penalties when non-violent crimes are at issue.

Individuals in the “libertarian” group are ambivalent in a different way. These respondents supported tougher sanctions on criminal offenders; however unlike “get tough” supporters, “libertarian” supporters favored legalization of marijuana. These survey respondents were younger, more educated, and more likely to be male than those in either the “get tough” or “dual frustration” category. Importantly, African Americans in the “libertarian” group were the least likely out of the four groups of African Americans surveyed to be poor. These African Americans likely had greater residential mobility than the other poorer groups; thus, the “libertarians” probably were the least likely of all African American respondents to live in very poor communities marked by high unemployment, crime, and open-air drug-selling. Residents of such neighborhoods might register opposition to legalization to make it as difficult as possible for their children to have access to drugs. Wealthier, educated individuals might also be more confident in their ability to control their children’s access to harmful drugs without resort to the criminal law.⁵⁴

Although a majority of African Americans supported the “get tough” position in 1986—a position that is conge-

53. Professor Randolph Stone has said that a felony conviction for an African American youth is an “economic life sentence.” See Randolph N. Stone, *Juvenile Justice: A Dream Deferred*, CRIM. JUST., Winter 1994, at 50.

54. Many in the “libertarian” group are young African American men who may not live with wives, partners or children.

nial to the most prevalent approach to drug-law enforcement today—policy makers must understand that the ambivalence in the African American community about the appropriateness of using harsh law enforcement to remedy the problems this community experiences relating to illegal drugs must be addressed if drug-law enforcement policy is to be efficacious. It is important to remember the large percentage of African Americans who supported the “dual frustration” view, as well as those who supported a “get tough” approach. I believe that the heterogeneity of African American attitudes toward drug-law enforcement reported here is a reflection of the social organization of the communities in which African Americans live. Paying greater attention to the social organization of poor, inner city communities is essential to improving drug-law enforcement policy.

The important feature of the social organization approach to crime reduction is its recognition of the fact that community structures mediate individual-level factors such as low socioeconomic status and criminal or delinquent behavior.⁵⁵ There are two major dimensions of neighborhood social organization: (1) the prevalence, strength, and interdependence of social networks; and (2) the extent of collective supervision exercised by residents and the personal responsibility they assume in addressing neighborhood problems.⁵⁶ Structures of social organization such as friendship networks, supervision of teenage peer groups and participation in formal organization, act to mediate individual-level predictors of crime such as low economic status, ethnic heterogeneity, residential mobility, urbanization, and family disruption. Efficacious policies reinforce,

55. See Tracey L. Meares, *Social Organization and Drug Law Enforcement* (Oct. 1996) (unpublished manuscript, on file with the *Buffalo Criminal Law Review*).

56. See Robert J. Sampson & W. Byron Groves, *Community Structure and Crime: Testing Social Disorganization Theory*, 94 *AM. J. SOC.* 774, 777-82 (1989); William Julius Wilson, *Crisis and Challenge: Race and the New Urban Poverty* (1994 *Nora and Edward Ryerson Lecture*), *U. CHI. REC.*, Dec. 8, 1994, at 42.

rather than weaken, community social organization.

Elsewhere I have evaluated current "get tough" drug-law enforcement policy through the lens of community social organization theory, concluding that this policy has the potential to undermine rather than promote the healing of weakened and impoverished neighborhoods because the current approach tends to exacerbate the precursors to social organization disruption such as low economic status, family disruption, and unemployment.⁵⁷ Because the "get tough" approach can reduce crime only by exacerbating community social *disorganization*, the "get tough" approach is destined to confound its own ends. We need instead a law enforcement policy that responds to the effects of concentrated poverty in inner city communities.

The social organization approach to drug-law enforcement holds a few lessons for federal criminal law. The approach suggests that the federal government's role in drug-law enforcement should be more limited than it is now. A community-level focus argues against uniform, national-level strategies. A community-level approach suggests that law-enforcement strategies must vary to accommodate different community needs. A community-level approach implies devolution from the federal government. One should not interpret this statement as an argument against federal involvement in drug-law enforcement altogether. Neither should my statement be taken as a call for federal disengagement from the problems generally associated with drugs. Federal government can play a useful role by paying greater attention to macro level inputs that improve community social organization such as education, housing, and jobs. Moreover, instead of focusing resources on a federal drug-law enforcement effort, the federal government should concentrate on supplying localities with more resources to deal with drug-related crime problems at the community level.

Additionally, and importantly, a focus on community social organization suggests that resources should be shift-

57. See Meares, *supra* note 55.

ed from reactive strategies to preventive ones. Scholars who discuss social organization theory often focus on the potential for attention to "root causes" to repair damaged communities.⁵⁸ The macro level inputs mentioned in the previous paragraph are examples of strategies that address so-called root causes of crime. They are preventive approaches. Law enforcement, too, can be preventive and thus can lead to social organization improvement. Governmental entities, including law enforcement agencies, are uniquely situated to provide resources and direction for affirmative organizational efforts. In fact, participation by residents in formal community policing programs is an example of precisely the type of activity that predicts social organization improvement, as participation in formal organization is an aspect of local community solidarity.⁵⁹ Moreover, participation in a neighborhood-based group in support of community policing is likely to lead to law-abiding behavior *directly*. When citizens participate in these programs they are engaged directly in the business of constructing and transmitting law-abiding norms. Unfortunately, the strategies we focus on now are reactive instead of preventive. They are therefore more likely to be harmful to embattled communities than helpful.

III. CONCLUSION

This project was designed to probe the level of support among African Americans for law enforcement policies that treat drug offenders very harshly. To test this support, African American attitudes about legalization of marijuana and the harshness of courts were evaluated along with other factors that were likely to reflect an individual's experience with the problems associated with illegal drugs and drug law enforcement and compared to the attitudes of no.

58. See Robert J. Sampson & William Julius Wilson, *Toward a Theory of Race, Crime, and Urban Inequality*, in *CRIME AND INEQUALITY* 37-54 (John Hagan and Ruth D. Peterson eds., 1995) (advocating policies promoting housing and employment).

59. See Sampson & Groves, *supra* note 56, at 779.

African Americans. Most Americans, including African Americans, did not favor legalization of marijuana in 1987. At the same time, most Americans, including African Americans, favored harsher courts for criminal offenders. Even though these results suggest that a majority of both African Americans and white Americans held a position congenial to punitive law enforcement policies directed at drug offenders, the results reveal important differences between African Americans and white Americans. African Americans as a group were less likely to conform to the "get tough" position than whites, and African Americans surveyed were much more likely to exhibit much more ambivalence in their views on drug-law enforcement than whites.

Policy makers can learn from the results presented here. First, policy makers can learn about the opinions, attitudes, and ideas of disadvantaged African Americans—the segment of the population that bears the brunt of both gang drug wars and the government's war on drugs. Attention to these findings is especially important in light of the fact that current drug policy is unlikely to reflect the views of disadvantaged African Americans.⁶⁰ Second, policy makers should understand that the complex views of African Americans on drug-law enforcement are likely to reflect the often low levels of social organization in communities with drug problems and that drug-law enforcement has the potential to improve community social organization by alleviating problems associated with drugs. These policy makers should also understand that drug-law enforcement should take care to avoid exacerbating precursors to social disorganization even as it attempts to improve social organization. The current federal drug law enforcement policy and local policies that mimic it are more likely to rip apart community fabric than to strengthen it. Such policies are dangerously misguided.

60. See Robert A. Jackson, *Clarifying the Relationship Between Education and Turnout*, 23 AM. POL. Q. 279 (1995) (elaborating on the well-established positive relationship between education and political participation).

III. TECHNICAL APPENDIX

A. *Data Sets*

1. GSS

To evaluate the opinions about drugs and law enforcement prior to the passage of the Anti-Drug Abuse Act of 1988, this analysis relies on two data sets. The first data set is the 1987 GSS. The GSS provides important information about respondents such as gender, race, educational attainment, work history, aspects of residence and the like. This study utilizes two measures relevant to attitudes toward drug-law enforcement as dependent variables: attitudes toward legalization of marijuana and attitudes about whether courts in the respondent's area should be more harsh on criminal offenders generally. For analysis of support for tough sentences for drug offenders, each of these measures, if considered alone, is less than ideal. However, combinations of the measures along the dimensions described earlier represent interesting and distinct views about drug-law enforcement that can be assessed along different dimensions such as race, class, and urbanization to provide useful insight into attitudes toward tough drug laws. It is important to note that even if a perfect study were undertaken today, data regarding past opinions would not be captured. In light of this problem it is necessary to use the best available data.

One reason opinions either favoring or opposing legalization of marijuana are less than ideal measures of attitudes about drug-law enforcement is that many people believe that marijuana is less dangerous than other drugs. A recent Gallup Poll provides some empirical support for the idea that many people hold very different opinions about different types of drugs. Fifty-four percent of respondents listed crack cocaine as the drug they personally felt was the biggest problem in the country today, compared to

six percent of respondents listing marijuana.⁶¹ Thus, those who hold very conservative views about marijuana use are likely to hold even more conservative views about the propriety of legalizing drugs they believe are more dangerous than marijuana. It is therefore likely that the legalization measure used in this analysis underestimates opposition to legalization generally among more conservative respondents.

A second reason why the legalization measure is less than ideal is that the information it conveys about a respondent's attitudes about drug-law enforcement is somewhat fuzzy. To be sure, we should be able to interpret responses in *support* of legalization as responses in opposition to law enforcement with respect to marijuana usage. However, the fact that a respondent opposes legalization of a drug does not reveal more specific information about the type of drug-law enforcement the respondent believes is appropriate. We know only that the respondent believes *some* law enforcement response is appropriate.

To provide more information about the quality of law enforcement policies respondents favored, this study also analyzed attitudes about the propriety of harsher local courts for criminal offenders. In the GSS data used in this analysis, attitudes toward legalization are highly associated with attitudes pertaining to whether courts in the respondent's area should be more harsh on criminal offenders generally ($\lambda = 0.54$, $z = 6.3$).⁶² The strong association between attitudes toward legalization and the harshness of

61. See THE GALLUP ORGANIZATION, THE OFFICE OF NATIONAL DRUG CONTROL POLICY, CONSULT WITH AMERICA: A LOOK AT HOW AMERICANS VIEW THE COUNTRY'S DRUG POLICY 28 (Mar. 1996). However, this poll is far from dispositive. Only four percent of these respondents listed heroin as a serious problem, and twenty-one percent listed all drugs (crack cocaine, powder cocaine, marijuana, heroin and other opiates, inappropriate use of prescription drugs, and LSD and other hallucinogens). *Id.* Responses obviously are dependent upon social contexts in which the seriousness of the problem depends not only upon the perceived seriousness of the drug but also upon the prevalence of the drug's use.

62. For a detailed explanation of the statistical model used to estimate this association, see *infra* pp. 171-74.

courts toward criminal offenders is an important indicator of the extent to which attitudes toward legalization in the GSS capture law enforcement views.

Like the legalization measure, the court harshness measure, if considered alone, is a less than ideal measure of support for tough drug law sentences. The survey question does not pertain directly to stiffer penalties for drug offenders; instead, it asks whether the respondent is willing to support harsher courts for criminal offenders *generally*. Obviously, the question covers drug offenders in addition to other types of offenders. Given the general nature of the measure, an issue of concern is the direction of bias. It is not clear which way these data are biased for purposes of the analysis here. That is, it is not clear that respondents would be either more or less likely to favor harsher courts for drug offenders compared to their willingness to favor harsher courts for criminal offenders generally. However, I expect that respondents who are more likely than not to know or be acquainted with someone who is imprisoned for any type of crime also are more likely to oppose harsher courts for criminal offenders. Moreover, I expect this effect to be strongest when the crime at issue is a nonviolent one, like most drug offenses.

Because it is likely that attitudes about drug law enforcement are influenced in part by increasingly high levels of incarceration for drug offending, a second data set, the Bureau of Justice Statistics' Survey of Inmates of State Correctional Facilities ("Survey of Prison Inmates") was analyzed in order to provide information about the level of drug-law enforcement among different groups of Americans.

2. Survey of Prison Inmates

The Surveys of Prison Inmates for 1979, 1986, and 1991 provide information about changes in drug law enforcement over time, which was used to construct drug-law enforcement rates for race and class groups. These data provide a context for the opinion survey analysis. Though only attitudes of survey respondents from 1987 were ana-

lyzed, I include the 1991 imprisonment rates in order to capture the dynamic aspect of incarceration for drug offenses. Based on the 1991 rates, it is very likely that when respondents in 1987 were tested, incarcerations for drug offending were on an upward trajectory.

Once every five years the Bureau of Justice Statistics conducts a national survey of thousands of inmates in state correctional facilities. Data are collected on individual characteristics of inmates, their current offenses and sentences and family background, among other things. This study utilizes the surveys for 1979 (N=11,397), 1986 (N=14,649), and 1991 (N=13,986).

To construct rates, the self-reported offense data first were recoded into the Federal Bureau of Investigation's Index Offenses (homicide, forcible rape, robbery, aggravated assault, burglary, larceny and car theft) along with two groups of drug offenses—drug trafficking and other drug offenses. Next, these categories were grouped by race and class. The class variable was created by recoding education. The occupation and income data in the prison survey are very poor; so a proxy for socioeconomic class was necessary. Education is a widely-accepted proxy for socioeconomic class.⁶³ Using education as a socioeconomic class proxy also allowed comparisons to be made between drug imprisonment rates among different groups and GSS survey data, which could easily be broken into race and educational attainment groupings. The relevant educational groupings are: less than high school (including those who obtained general equivalency degrees), high school degree, and some college education. Drug imprisonment rates for each race and class group were computed by using data from the Survey of Prison Inmates as numerators and computing weighted race and educational attainment subgroupings of the United States population from the Current Population Surveys of 1979, 1986, and 1991 for the denominators.

63. See VERBA ET AL., *supra* note 37.

B. Recoding of GSS Data

The model employed in this analysis requires two dichotomous variables. The responses to the legalization question were "closed." Respondents were offered two responses—"should" and "should not"—when asked, "Do you think use of marijuana should be made legal or not?" In response to the court harshness question, however, some respondents volunteered answers that were not offered. Respondents were asked, "In general, do you think the courts in this area deal too harshly or not harshly enough with criminals?" Individuals were allowed to respond in five different ways: too harshly, not harshly enough, about right, don't know, and no answer. Therefore, the responses were not dichotomous. It was necessary to recode some of the values in the court harshness variable.

The recoded values used in this analysis distinguish between two kinds of individuals—those who favor more harsh courts for criminal offenders generally and those who do not. In colloquial terms, the recoded values distinguish between individuals some would describe as punitive and individuals some would describe as non punitive. For example, the most punitive individuals think that the courts are "not harsh enough" on criminals. Non punitive individuals think the courts are "too harsh." A loglinear model was used determine whether the respondents who volunteered answers such as "about right," "don't know," or who gave a response coded "no answer" when asked about the harshness of local courts on criminal offenders were more like punitive individuals or non punitive individuals. The scores from the loglinear model of the courts variable determined that the most punitive individuals surveyed responded "not harsh enough," and the second most punitive individuals responded "about right." The individuals who responded either "don't know" or "no answer" were the least punitive individuals surveyed.

Although, the punitive/non punitive distinction clouds some of the differences between the responses, this analysis coded as "punitive" responses that characterized courts as

either “not harsh enough” or “just right.” All other responses were coded “non punitive.” The following table displays values of the court harshness variable by levels of responses to the legalization question before recoding:

Figure 2

		not harsh enough	too harsh	about right	don't know/ no answer
Legalize?	No	1170	33	149	53
	Yes	206	22	43	26

Since there are only two values for the legalization variable, the model is saturated; therefore, issues of relative model fit cannot be discussed.

In an analysis of similar data a group of researchers simply contrasted punitive views with non punitive views by grouping “about right” answers with non punitive views. The method used here is more refined and precise.⁶⁴

C. Statistical Model

The model used in this analysis is more sophisticated than the typical logit loglinear model. The dependent variable estimated in this loglinear model is a *composite* of two dichotomous variables: the legalization measure and the

64. See Steven F. Cohn et al., *Punitive Attitudes Toward Criminals: Racial Consensus or Racial Conflict*, 38 SOC. PROBS. 287, 289-90 (1991). For a detailed explanation of the procedures used here, see Leo Goodman, *New Methods for Analyzing the Intrinsic Character of Qualitative Variables Using Cross-Classified Data*, 93 AM. J. SOC. 529 (1987); LEO GOODMAN, *THE ANALYSIS OF CROSS-CLASSIFIED DATA HAVING ORDERED CATEGORIES* (1984).

measure for attitudes toward court harshness. The model isolates the effect of different predictors of the likelihood that an individual will either favor legalization of marijuana or not favor it, and it also isolates the effect of different predictors of the likelihood that an individual will either favor or not favor more harsh courts for criminal offenders generally. At the same time, the model controls for the association between attitudes toward legalization and attitudes toward the harshness of courts.

This technique is useful for two reasons. First, it is likely that attitudes toward the harshness of law enforcement affect whether a person supports legalization of marijuana. The model employed here confirms that the association between legalization and support for local courts that are more harsh on criminal offenders is strong ($\lambda = 0.54$, $z = 6.3$). This association means that respondents who oppose legalization of marijuana are likely to support harsher courts, while respondents who support legalization are likely to oppose harsher courts. Note that these associations reflect the analytical guideposts I have selected for analysis. Entering attitudes toward court harshness as an independent factor in a logit model of legalization masks the effect of other variables on legalization. However, using the technique described below, I am able to obtain estimates for factors on legalization that are independent of their effects on punitiveness. Second, isolation of the effect of other variables on attitudes toward court harshness reveals important information that is theoretically useful, as I explain in sections one and two of this article.

The Model employed in this analysis has the following form:

The dependent variable estimated in the loglinear model is a composite of two variables: whether or not an individual favors less harsh courts ("non punitive") and whether or not an individual favors the legalization of marijuana ("legalization").

Let y represent the composite variable such that

$y = 2 * (\text{non punitive } -1) + \text{legalization};$

where 2 is a positive response on either variable and 1 is a negative response.

Consider this contrast below:

1	1	1	1
-0.5	-0.5	0.5	0.5
-0.5	0.5	-0.5	0.5
0.25	-0.25	-0.25	0.25

The composite variable has four levels, which allows effects for three independent contrasts to be estimated. There is a contrast for favoring legalization versus not favoring the legalization of marijuana. There is a contrast for favoring less harsh courts for criminal offenders versus not favoring less harsh courts. And there is a contrast for the association between punitiveness and support for legalization. That is, there is a contrast between the likelihood that a respondent will favor the "get tough" or "anti-law enforcement" positions as opposed to the drug-law enforcement positions in the off-diagonals, which are the "libertarian" and the "dual frustration" views.

The saturated loglinear model for y , a composite of two dichotomous variables, can be written as:

$$\ln(F_{ij}^{AB}) = \lambda + (0.5)\lambda_i^A + (0.5)\lambda_j^B + (0.25)\lambda_{ij}^{AB};$$

where

$$\lambda_2^A = -\lambda_1^A; \lambda_2^B = -\lambda_1^B; \lambda_{21}^{AB} = -\lambda_{12}^{AB}; \lambda_{22}^{AB} = -\lambda_{11}^{AB}.$$

Then, λ_i^A represents the log-odds of taking category 1 versus 2 of variable A, controlling for variable B; λ_j^B represents the log-odds of taking category 1 versus category 2 of variable B, controlling for variable A; and λ_{ij}^{AB} represents the

log-odds ratio between variables A and B.⁶⁵

65. For another example of the model used here, see Patrick E. Shrout & Denise B. Kandel, *Analyzing Properties of Dyads: Determinants of Similarity of Marijuana Use in Adolescent Friendship Dyads* 9 *SOC. METHODS & RES.* 363 (1981).

Principles of Criminal Legislation in Postmodern Society: The Case of Environmental Law

Bernd Schünemann*

A comparative analysis of environmental law in the United States and Germany reveals that environmental law serves as a paradigm for the current skepticism toward penal law and its usefulness as an instrument for the prevention of social harm. The ecological hypocrisy at the heart of postmodern society, which defines itself by its heedless consumption of environmental resources, renders effective enforcement of environmental protection measures impossible. To ensure the continued enjoyment of the environment in the face of its rampant legal and illegal use, it will be necessary to establish an environmental criminal law derived from the natural law principle of inter-generational equality.

I. THE BASIC PRINCIPLES OF CRIMINAL LEGISLATION IN THE UNITED STATES AND GERMANY

To compare two legal systems with respect to a limited area of penal politics, such as environmental criminal law, would not generate particularly interesting results if it turned out that the systems in question were based on vastly different fundamental goals, ideas, and perspectives. No deep gap, however, separates the basic principles of American and German criminal law, even though the history of criminal law and its theoretical foundations have taken entirely different paths in the two systems. Neither in the United States nor in Germany may the legislature decide entirely at its own discretion which conduct should be criminalized and which should not.

Although the constitutional conditions for criminalizing

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