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Predatory Public Finance and the Origins of the War on Drugs 1984–1989

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BRUCE L. BENSON AND
DAVID W. RASMUSSEN

The Harrison Act of 1914 is often cited as the law that made consumption of narcotics illegal. In reality, the Harrison Act established very modest “sin taxes” on the sale of narcotics such as opiates. What became illegal as a result of the act was the possession or sale of untaxed narcotics. Policy against marijuana began in a similar fashion with passage of the Marijuana Tax Act in 1937.¹ Sin taxes such as these inevitably lead to crime, however, as individuals attempt to avoid the tax through black markets, smuggling, and the violent forms of competition and contract enforcement that accompany such activities. An excise tax may reduce the level of the sin being taxed, but it simultaneously induces new kinds of sin that are often much more costly for society. This occurred with narcotics and marijuana. However, rather than recognize the source of the crime and eliminate the sin taxes, full-blown criminalization of possession or sale of

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1. The Marijuana Tax Act was nominally a revenue-producing act that imposed taxes on physicians who prescribed marijuana, pharmacists who dispensed it, and others who might deal in the drug. The nonmedical possession and sale of the drug were made illegal, however, and all those in the production and distribution chain for medical purposes were required to keep detailed records and pay annual fees. These onerous record-keeping requirements, taxes, and fees effectively ended the legal use of the drug for medical purposes as well.

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narcotics and marijuana evolved as bureaucrats who were given the authority to police these markets and collect the taxes propagated the belief that it was the "sin" of drug consumption that produced the crime, rather than the incentives to avoid the taxes imposed on the sin. The purpose of the following is to show that bureaucratic self-interest and predatory public finance in the form of explicit or implicit sin taxes have been and continue to be the primary determinants of public policy in the area of illicit drug control.

When sin-tax-induced crime becomes a serious problem, the government entity imposing the tax has at least these two options: to crack down on the resulting crime or to repeal the sin tax. Consider Quebec's recent experiences with taxes on cigarettes, for instance. A 9 August 1993 article in *Maclean's*, a leading Canadian newsmagazine, notes that "Tax levels in excess of 60 per cent on cigarettes have convinced many smokers that they are justified in breaking the law." Roughly half the cigarettes in Quebec and some other Canadian provinces were being bought in illegal black markets in order to avoid excise taxes; indeed, one in nine cigarettes consumed in the entire country was illegally purchased. As one buyer of black market cigarettes explained, "Stupid laws are meant to be broken." As noted earlier, however, tax evasion is not the only crime arising from sin taxes. Canada's illegal cigarettes were smuggled across the border. Canada exported roughly 7.6 billion cigarettes to the United States in 1992, for instance, and police estimate that 80 percent were smuggled back into Canada. Cigarette smuggling was so lucrative that organized crime got involved. Rival smuggling gangs exchanged gunfire as they competed for shares of the illegal market. They stole large boats, armed them with mounted guns, and painted them black for nighttime smuggling. Thus, an inevitable cost of high excise taxes was that crime rose, so demands for already-pressed policing, courts, prisons, and other law enforcement services increased. Canadian police were forced to become involved in the same kinds of interdiction efforts against cigarettes the United States is attempting today with illegal drugs. The results were similar: the flow of illegal cigarettes into Canada was unabated. Further, a crackdown on the sin-tax-induced crime means that either taxes have to be raised to support a larger criminal justice system or some of the society's precious criminal justice resources have to be shifted away from efforts to deter burglars, robbers, rapists, and other criminals who threaten lives and property, in order to control black markets, smuggling, and the violence that arises with these activities. Quebec citizens apparently recognized this, and in 1994 the Quebec government announced a massive reduction in cigarette tax in an effort to end uncontrollable smuggling.

The Wages of Sin Taxes

Citizens of the United States did not see the consequences of sin taxes on narcotics and marijuana that Quebec citizens recognized regarding the taxes on cigarettes. Thus, the United States took a different route. Crime control

became the focus of public policy. Nonetheless, sin taxes remain extremely relevant to this day in a different form, as asset seizure laws have been revised to allow law enforcement bureaucrats to “tax” those who participate in illicit drug markets. Indeed, this helps explain why so many state and local components of the criminal justice system responded to the federal call for the latest offensive in the “war on drugs” after 1984.

The most recent renewal of the war on drugs in the United States was declared by President Reagan in October 1982 (Wisotsky 1991). Such an offensive in United States had to be waged by state and local “troops,” however, and state and local law enforcement agencies generally did not increase their relative efforts against drugs in a dramatic fashion until 1984, when a substantial reallocation of state and local criminal justice system resources toward drug enforcement began. In fact, although drug arrests relative to arrests for reported crimes against persons and property (Index I offenses of murder, manslaughter, sexual assault, assault, robbery, burglary, larceny, and auto theft) remained relatively constant at one to four from 1970 to 1984, the relative effort against drugs increased by roughly 45 percent over the next five years. By 1989, criminal justice resources were being allocated to make only about 2.2 Index I arrests for each drug arrest.

There are a number of possible explanations for the upsurge in drug enforcement. Perhaps local elected officials, representing median-voter preferences across the nation, almost simultaneously demanded that their police departments escalate the war on drugs. There are strong indications that this explanation does not hold, however (Rasmussen and Benson 1994, 122–27). For example, in 1985, public opinion surveys suggested that drug use was not considered an especially significant problem. Indeed, illicit drug policy appears to be a case in which policy changes led public opinion, at least during the escalation of the drug war over the 1984–89 period. Another explanation for the trends in the reallocation of local police resources during this period is that powerful interest groups demanded the war. As Chambliss and Seidman (1971) concluded, “every detailed study of the emergence of legal norms has consistently shown the immense importance of interest-group activity, not the public interest, as the critical variable” (73). Similarly, Rhodes (1977) pointed out that “as far as crime policy and legislation are concerned, public opinion and attitudes are generally irrelevant. The same is not true, however, of specifically interested criminal justice publics” (13). More recent research reaches similar conclusions,² and also makes it clear that one of the most important

2. Bureaucrats often try to influence the demand side of the political process (Berk, Brackman, and Lesser 1977; Congleton, 1980; Breton and Wintrobe, 1982; Benson 1983, 1990; Mbaku, 1991). They have incentives to “educate” the sponsor regarding interest-group demands that complement their own and to “propagate” their own agenda. Furthermore, they may have a relative advantage in the lobbying process because they have ready access to the sponsor with whom they are often informally networked (Breton and Wintrobe 1982, 41–42), and they are naturally called upon, due to their expertise. This is clearly the case with law enforcement bureaucracies (Glaser 1978, 22). Additional discussion of the role of bureaucrats as demanders

“specifically interested criminal justice publics” consists of law enforcement bureaucrats (e.g., Berk, Brackman, and Lesser 1977; Benson 1990, 105–26; Rasmussen and Benson 1994, 119–73). In order to establish the argument that police bureaucracies have considerable power in the game of interest-group politics, at least as it pertains to drug legislation, in the next section we will briefly examine law enforcement influences on the historical emergence of illicit drug legislation and subsequent criminalization. We will do so in the context of Breton and Wintrobe’s model of bureaucratic efforts to establish policy. The significant role that entrepreneurial bureaucrats have played in the development and evolution of drug policy is emphasized as a prelude to the “Police Interests” section, in which we examine federal legislation during the 1980s from the same perspective.

The “Police Interests” section provides an explanation for state and local police involvement in the 1984–89 drug war. Specifically, state and local policing officials faced what presumably was an exogenous change in bureaucratic incentives (although at least some of these police officials were important sources of the demand for the change) that induced an increase in drug enforcement efforts. In particular, one section of the Comprehensive Crime Act of 1984 established a system whereby any local police bureau that cooperated with federal drug enforcement authorities in a drug investigation would share in the money or property confiscated as part of that investigation. As a result, police in many states whose own laws or constitutions limited confiscation possibilities began to circumvent state laws by having federal authorities “adopt” their seizures.³ Thus, under the 1984 federal statute, a substantial percentage of these seized properties went back to the agency that seized them, even if the state’s laws mandated that confiscations go someplace other than to law enforcement. This asset seizure law not only established a way to tax the sin of involvement in drug markets, but it required that the resulting revenue go to the tax collector—the law enforcement agency—thus creating relatively strong incentives to collect the tax. Demanded by federal, state, and local law enforcement bureaucrats, this legislation largely reflects the bureaucratic competition and cooperation modeled by Breton and Wintrobe (1982).

Perhaps local police bureaucracies advocated such legislation and joined in the drug war because they perceived it to be in the “public interest.” Considerable evidence suggests that the opportunity costs of resources allocated to the war on drugs have been very high,⁴ however, and a good

of legislative action appears in the next two sections of this paper.

3. Many states mandated that confiscated assets be turned over to a general government authority, whereas others required that some or all seized assets be used for specific purposes, such as drug treatment or education. Various states also limited the kinds of assets that could be seized. For instance, in 1984, only seven states allowed seizure of real estate used for illegal drug activities. The federal statute had no such limitation.

4. See Reuter (1991), Benson and Rasmussen (1991, 1992), Benson and others (1992), Rasmussen, Benson, and Sollars (1993), Sollars, Benson, and Rasmussen (1994), Rasmussen and Benson (1994), and Zimring and Hawkins (1992).

deal of evidence also indicates that many law enforcement bureaucracies created misinformation in order to exaggerate the potential benefits of a drug war (Michaels 1987, 311–24). This is relevant because if confiscations can be used at the discretion of local police bureaucrats to significantly enhance their own well-being, then this federal statute may explain a substantial portion of the changes in the allocation of local police resources after 1984. Local interbureau competition for resources may lead government decision makers (bureau sponsors) to treat confiscations as a substitute for ordinary appropriations. Therefore, an important component of the “Police Interests” section is the summary of a case study by Benson, Rasmussen, and Sollars (1995) of the budgetary impact of local police confiscations from the drug war. The findings are consistent with the hypothesis that confiscations legislation creates significant incentives to change the allocation of police resources.

Not all states were equal participants in the 1984–89 war on drugs. In a few states drug arrests accounted for a smaller portion of all arrests in 1989 than in 1984. These are the exceptions, however. The largest states, such as California, Florida, Michigan, Illinois, and Pennsylvania, increased drug enforcement to an extent that the U.S. drug arrest/total arrest ratio rose 67 percent between 1984 and 1989—from 5.8 percent to 9.7 percent. As table 1 shows, there is significant variation in drug enforcement activity across states as well as through time. If the “sin-tax/bureaucratic-self-interest” story actually provides a strong explanation of drug enforcement policy, it should help explain cross-sectional variation in enforcement policy as well as time series variation. This question has been explored in a cross-sectional analysis of cities’ drug enforcement policies (Rasmussen, Benson, and Mast 1994). Since federally “adopted” seizures are only partially turned back to the local police (the federal authorities extract a 20 percent handling charge), police in states whose own laws allow them to retain seized assets are able to obtain even greater benefits from seizures than police who must involve federal authorities in the process. Thus, a self-interest view of police bureaucrats suggests that in states whose laws allow the police to retain seizures, police will focus relatively greater efforts against drugs than police do in states whose laws take such seizures away from the police. This expectation is supported by the empirical results in Rasmussen, Benson, and Mast (1994). These findings and their implications are explored in the “Differences in Drug Enforcement” section.

The escalation of the U.S. war on drugs ended in 1989. Indeed, after 1989, a substantial reduction in drug enforcement effort occurred. The concluding section offers several potential explanations for this down-cycle in drug policy, all of which are consistent with the sin-tax/bureaucratic-self-interest arguments that explain the 1984–89 escalation of drug enforcement.

Table 1: Drug Arrests per 100,000 Population, by State, 1984 and 1989

STATE	RANK	1989	1984	%CHG	STATE	RANK	1989	1984	% CHG
Alabama	21	392	190	106.3	Montana	27	332	130	155.4
Alaska	44	162	120	35.0	Nebraska	32	283	150	88.7
Arizona	11	519	380	36.6	Nevada	42	170	110	54.5
Arkansas	30	311	230	35.2	New Hampshire	35	265	138	92.0
California	1	1,060	590	79.7	New Jersey	2	895	460	94.6
Colorado	33	279	230	21.3	New Mexico	13	454	300	51.3
Connecticut	8	647	270	139.6	New York	3	799	510	56.7
Delaware	28	329	230	43.0	North Carolina	20	411	261	57.5
Florida	6	675	360	87.5	North Dakota	49	107	160	-33.1
Georgia	7	661	344	92.1	Ohio	17	426	190	124.2
Hawaii	25	355	420	-15.5	Oklahoma	29	327	270	21.1
Idaho	39	221	140	57.9	Oregon	15	438	240	82.5
Illinois	14	446	120	271.7	Pennsylvania	34	274	130	110.8
Indiana	41	189	130	45.4	Rhode Island	19	422	380	11.1
Iowa	46	119	90	32.2	South Carolina	12	470	300	56.7
Kansas	37	233	140	66.4	South Dakota	47	118	190	-37.9
Kentucky	9	528	300	76.0	Tennessee	36	263	160	64.4
Louisiana	10	526	270	94.8	Texas	16	433	360	20.3
Maine	38	229	130	76.1	Utah	31	291	320	-9.1
Maryland	4	776	420	84.8	Vermont	48	109	n.a.	n.a.
Mass.	5	689	310	122.3	Virginia	26	341	200	70.5
Michigan	23	374	170	120.0	Washington	24	369	170	117.1
Minnesota	45	161	130	23.8	West Virginia	50	88	100	-12.0
Mississippi	22	375	190	97.4	Wisconsin	40	207	200	3.5
Missouri	18	422	240	75.8	Wyoming	43	169	180	-6.1
					United States		538	312	72.4

Source: U.S. Department of Justice, Bureau of Justice Statistics (1984/1989).

Police Bureaucrats, Interest Group Politics, and Drug Policy

There are many models of bureaucratic behavior based on self-interest assumptions. Tullock (1965) saw bureaucratic behavior driven by a desire for security. Chant and Acheson (1972) contended that a desire for prestige drove bureaucratic behavior. Niskanen (1968, 1971) assumed that a bureau manager could be characterized as a budget maximizer. Migué and Belanger (1974) explained that budget maximization unduly limits the range of utility-maximizing efforts, however, and proposed that the bureaucrat seeks

discretion reflected by a budget with excess revenues over actual costs (an argument Niskanen accepted [1975]).⁵

Public officials are presumably characterized by the same basic utility-maximizing behavior that motivates people operating in private markets. The institutional framework of public officials may differ from that of private-sector employees, but their fundamental objectives do not. Employment security is a desirable job attribute in the private sector, for instance. The U.S. Department of Health, Education, and Welfare Task Force (1973) found that job security, along with interesting work and opportunity to develop special skills, were considered to be the most important features of job quality. Not surprisingly, civil service bureaucrats are also very concerned about job security (Johnson and Libecap 1989). The same point can also be applied to elected officials, whose desire to be reelected is consistent with this broadly held desire for secure employment. Surveys of private-sector employees identify other sources of worker satisfaction that may be equally applicable to elected and appointed public officials and civil-servant bureaucrats: good pay; discretionary authority, information, and opportunity to get the job done; and seeing the results of one's work. Discretion to control the intensity and pace of work is also an important job characteristic, and some research suggests that part of the wage premiums paid to workers in very large manufacturing plants is explained by the absence of this job attribute (Stafford and Duncan 1980). Thus, discretion itself may be a major source of satisfaction for bureaucrats and public officials (Parker 1992).

Job characteristics people value in a private setting are not likely to lose their allure just because someone is engaged in public-sector employment. In this light, Breton and Wintrobe (1982) noted: "In addition to size, budgets, discretion, prestige, and self-preservation, it has been suggested that security, the avoidance of risk or responsibility, secrecy, complexity, career promotion, leisure, internal patronage, and a bureaucrat's personal conception of the common...good are objectives of bureaucrats, either one at a time or in groups" (27). They suggested that all of these factors may enter a bureaucrat's utility function and that no general theory of bureaucratic behavior can be built by specifying a particular objective. Thus, they assumed general utility maximization and focused on the institutional setting (e.g., the intensity of interbureaucratic competition for budget shares and intrabureaucratic competition for promotions and positions in networks, the existence of barriers to mobility, the ability of superiors and sponsors to monitor performance, and so on) as the determinant of which particular objective will appear to dominate in a particular bureau. Breton and Wintrobe characterized the bureaucratic institutional process as one domi-

5. A large literature has developed following in this Niskanen/Migué-Belanger framework: see Toma and Toma (1980), Gonzalez and Mehay (1985), Benson and Greenhut (1986), Wyckoff (1988, 1990a, 1990b), and Kress (1989).

nated by “entrepreneurial competition,” wherein individual bureaucrats pursue their subjective goals by selectively seeking and implementing policy innovations.⁶ This characterization fits the role played by law enforcement bureaucrats in the evolution of U.S. drug criminalization policy.

Actually, a number of self-interest political motivations for demanding drug legislation have been identified for both bureaucratic and nonbureaucratic interest groups. Some studies have noted the incentives of professional organizations such as the American Pharmaceutical Association to create legal limits on the distribution of drugs (there was significant competition between pharmacists and physicians for the legal right to dispense drugs, for example),⁷ whereas others have focused on the strong racial impacts of illicit drug laws and the desire by some groups to control racial minorities through the enforcement of such laws.⁸ More important from the perspective stressed here, however, others have emphasized that law enforcement bureaucrats were a major source of demand for criminalization of narcotics after the Harrison Act was passed and for passage of the Marijuana Tax Act and subsequent criminalization of this illicit drug.⁹

Breton and Wintrobe (1982, 146–54) explained that one bureaucratic strategy to compete for resources is to “generate” demand for a bureau’s own services through direct lobbying, policy manipulation, and the selective release of information to other interest groups and the media. This occurs

6. This competition is multidimensional. It includes general competition for resources as well as competition for positions and promotions in the formal bureaucratic structure and membership in the informal networks that bureaucrats develop to facilitate nonmarket exchanges of benefits, information, and support among network members. Competitive strategies employed include “(i) alterations in the flows of information or commands as these move through or across the hierarchical levels of the organization; (ii) variations in the quality or quantity of information leaked to the media, to other bureaus in the organization, to special interest groups, and/or to opposition parties and rival suppliers; and (iii) changes in the speed of implementation of policies as these are put into effect” (Breton and Wintrobe 1982, 37–38). These strategies and selective behavior in general are possible because of the way bureaucratic organizations and hierarchies work, including the fact that monitoring by sponsors is costly and the measurement of bureaucratic performance is generally difficult or impossible. Indeed, the use of such strategies can increase monitoring costs and make measurement of performance even more difficult.

7. See Musto (1987, 13–14, 21–22), Thornton (1991, 56–60), and Klein (1983, 31–55).

8. Bonnie and Whitebread (1974), Helmer (1975), Musto (1987), and Nadelmann (1993).

9. See Himmelstein (1983), Becker (1963), Bonnie and Whitebread (1974), King (1957), Dickson (1968), Oteri and Silvergate (1967), Lindesmith (1965), Hill (1971), and Reinerman (1983). In fact, as Thornton (1991, 62, 66) and Morgan (1983, 3) stressed, all of the various self-interests mentioned (bureaucrats, professionals from the American Medical Association and American Pharmaceutical Association, and groups attempting to suppress certain races or classes) interacted with still more groups (temperance groups, religious groups, and so on) to produce policies against drug use. Interest groups and bureaucratic entrepreneurs continue to dominate modern drug policy as well. These groups include “civil rights, welfare rights, bureaucratic and professional interests, health, law and order, etc.” (Morgan 1983, 3). For instance, the pharmaceutical industry had a significant impact on the Comprehensive Drug Abuse Prevention and Control Act of 1970: “In this case as in most others, the state’s policy makers were buffeted by law enforcement interests and professional interests” (Reinerman 1983, 19).

because bureaucrats must compete with other bureaucracies for the support and attention of sponsors (and individual bureaucrats must compete with other bureaucrats for benefits within a bureau), and because the control of resources is necessary before bureaucrats can achieve most of their subjective goals.¹⁰ Indeed, Lindesmith (1965) contended that the nation's program for handling the "drug problem" is one "which, to all intents and purposes, was established by the decisions of administrative officials of the Treasury Department" (3). Why would the Treasury Department care about drug criminalization? Because the Harrison Act established federal taxes on narcotics, and the Treasury Department's Federal Bureau of Narcotics was responsible for its enforcement. For several years after its passage in 1914, the Harrison Act remained a rather unimportant source of taxes and regulatory measures (Reinarman 1983, 21). Indeed, its most important consequence may have been that a bureaucracy grew up to enforce the act. Given its regulatory powers, the Federal Bureau of Narcotics chose to instigate criminalization of opiate users with a series of raids on morphine treatment clinics in 1919.¹¹ King (1957) maintained that "the Narcotics Division launched a reign of terror. Doctors were bullied and threatened, and those who were adamant [about treating addicts] went to prison" (122). Efforts by bureaucrats in the Narcotics Bureau led to a series of court decisions that reinterpreted the Harrison Act and became the pretext for criminalization of drug use (Reinarman 1983, 21). Furthermore, because of pressure from people in the same bureau, the Marijuana Tax Act was passed in 1937.¹² Some writers have stressed moral entrepreneurship by Narcotics Bureau officials (e.g., Becker [1963]), but others have focused on bureaucratic fiscal self-promotion (e.g., Dickson [1968]). The bureau was in need of a new *raison d'être* for continued funding in 1937, as it faced stiff competition from the FBI for the attention of the public and congress (King 1978), both of whom wanted crime control to be in the domain of the FBI rather than the Treasury Department's Narcotics Bureau.

Breton and Wintrobe (1982, 39) emphasized that bureaucratic release of both true and false information, or "selective distortion," can play significant roles in bureaucratic policy advocacy.¹³ This has clearly been the case in the evolution of drug policy. For example, the bureaucratic campaigns leading to the 1937 marijuana legislation "included remarkable distortions

10. See Stutmann and Esposito (1992) for a very revealing examination of the actual activities of a DEA agent, and note the tremendous amount of time and effort that this agent spent in competing for resources. Also note the significant role that politics played in determining the allocation of drug enforcement resources. This entire book could be easily set in the context of the Breton-Wintrobe model of bureaucratic entrepreneurship.

11. King (1957); Lindesmith (1965); Klein (1983, 32).

12. Becker (1963); Dickson (1968); Oteri and Silvergate (1967); Lindesmith (1965); Hill (1971); Bonnie and Whitebread (1974).

13. This is suggested by the second strategy listed in note 6, and arises in part because of the high cost of monitoring bureaucrats.

of the evidence of harm caused by marijuana, ignoring the findings of empirical inquiries.”¹⁴ The “reefer madness” scare traces to the misinformation propagated by the Bureau of Narcotics. Marijuana was alleged to cause insanity, incite its users to rape, and produce a delirious rage in users, making them irresponsible and prone to commit violent crimes. Distortions did not stop there. For instance, the bill was represented as largely symbolic in that it would require no additional enforcement expenditures (Galliher and Walker 1977).

The evolution of drug policy since initial legislation has also been, at least in part, shaped by bureaucratic competition, both between law enforcement and drug treatment bureaucrats over “ownership of the problem”—that is, over shares of federal, state, and local budgets (Gusfield 1980; Morgan 1983)—and between law enforcement bureaucracies themselves (e.g., between the DEA and the FBI [King 1978] at the federal level, as well as among various local, state, and federal bureaucracies). This evolution reflects another aspect of the bureaucratic process emphasized by Breton and Wintrobe (1982). As the perceived responsibility for some social ill (e.g., crime in this case, and inflation in Breton and Wintrobe’s) shifts from outside forces to the government, and hence to the bureaucracy, bureaucrats seek to shift the blame elsewhere (Breton and Wintrobe 1982, 149). Blaming crime on people crazed by drugs provides an opportunity to shift blame.

A good deal of false or misleading information emanating from police bureaucrats about the relationship between drugs and crime has clearly characterized the evolution of drug policy.¹⁵ In fact, a primary source of the “information” (much of which was inaccurate and/or unsubstantiated [Michaels 1987, 311–24]) used to justify the 1984–89 war on drugs was the police bureaucracies. Primarily as a result of information promulgated by police (Barnett 1984, 53), it has become widely believed that drug crime is the root cause of much of society’s problems (e.g., see the Office of National Drug Control Strategy [1990, 2]). In particular, drug use is claimed to be a leading cause of nondrug crime because, it is contended, property crime is a major source of income for drug users. This claim has served to justify political demands for the criminal justice system to do something about the drug/crime problem, demands that emanate largely from the police lobbies (e.g., see Berk, Brackman, and Lesser [1977]; Barnett [1984]; Benson [1990]; and Rasmussen and Benson [1994]), and in turn, to justify an emphasis on control of illicit drug traffic as a means of general crime prevention.

State and federal legislators have passed increasingly strict sentencing laws for drug offenders, police have shifted resources to make more drug

14. Richards (1982, 164). For details see Kaplan (1970, 88–136), Lindesmith (1965, 25–34), Himmelstein (1983, 60–62), and Bennett and DiLorenzo (1992, 237–39).

15. Lindesmith (1965); Kaplan (1970, 1983); Richards (1982); Michaels (1987); Bennett and DiLorenzo (1992); Rasmussen and Benson (1994).

arrests, and judges have sentenced increasing numbers of drug offenders to prison. Such a reallocation of resources would appear to be justified if drugs truly are the root cause of most other crime, but these causal relationships do not actually hold. In particular, increased drug enforcement efforts tend to cause increases in crime, as other types of crime are less effectively deterred.¹⁶ Thus, the opportunity costs of the war on drugs appear to be quite high. This should not be surprising, of course, given the history of failure of drug and alcohol prohibition policies (Thornton 1991; Nadelmann 1993). The question, “why has this reallocation occurred?” would appear to be even more pressing, given the circumstances.

Breton and Wintrobe (1982, 150–51) offer two reasons bureaucrats advocate a policy of direct control of a source of blame (e.g., alcohol prohibition, criminalization and prohibition of various drugs after 1914 and 1937, increased emphasis on drug control in the mid-1960s, and then again in the mid-1980s), even though such policies have a history of failure. First, there is always opposition to such a policy, so when it fails the opposition can be blamed for not allocating enough resources to combat the problem. And second, since the outcome of the policy depends jointly on the inputs of several different groups and bureaus, and the set of possible control methods is very large, when the subset selected fails, the bureaucrats can argue one or both of the following: (1) although they advocated a control policy, they favored a different subset of control tools (e.g., more severe punishment of drug offenders, greater spending on interdiction efforts), so they are not responsible for the failure; (2) the other groups who had to contribute to make the effort successful (e.g., witnesses, judges, legislators who approve prison budgets, other law enforcement agencies) did not do their share. Indeed, a policy can fail completely while at the same time entrepreneurial bureaucrats expand their reputations and end up being substantially better off.¹⁷

The ongoing competition for a share of the total budget is always an important factor. After all, few of the subjective goals of bureaucrats can be achieved without a budget. Therefore, each bureau must demonstrate that it is doing a good job in serving its constituencies. The function of police in the minds of most citizens is to “fight crime,” of course, but how can interest groups, voters, taxpayers, and elected representatives tell if police are doing a good job? The number of crimes prevented cannot be quantified. Therefore, police need statistical indicators of their “productivity” to use in their lobbying efforts for expanded budgets (Sherman 1983, 156). The

16. See Benson and others (1992), Sollars, Benson, and Rasmussen (1994), and Benson and Rasmussen (1991). Rasmussen, Benson, and Sollars (1993) provide evidence that violent crimes may also be caused by drug enforcement; see also Reuter (1991) in this regard.

17. Note with Breton and Wintrobe (1982) that “one need not assume Machiavellian behavior, deceit, or dishonesty on the part of bureaucrats, because in all likelihood the pursuit of their own interest will be, as it is for everyone else, veiled in a self-perception of dedication and altruism” (152).

number of arrests is a natural measure of “effectiveness,” and this is a primary “statistic” police focus on in the budget negotiation process. Others include response times following emergency calls and, increasingly, asset seizures. Indeed, drug prohibition provides a source of arrests that does not require waiting for some victim to report a crime, and it provides a new statistical indicator of effectiveness: the value of drug seizures (and of nondrug property seizures, as will be discussed).¹⁸

Under prohibition, police incentives may be even more “perverted” than suggested so far: there are actually incentives to allocate resources in order to avoid deterring Index I crime. After all, although arrest statistics may be primary indicators of police performance used in the budget bargaining process, they are not the only important statistic used in such bargaining. As Milakovich and Weis (1975) noted, police have a “vested interest” in keeping crime rates relatively high: if crime rates drop too much, then support for more police and larger budgets declines, and “like all bureaucracies, criminal justice agencies can hardly be expected to implement policies that would diminish their importance” (10). The literature on the economics of crime indicates that higher Index I crime rates clearly are correlated with more police resources in “demand for policing” equations, supporting the assumption that political demands for police services rise if reported crime rates are high. But if police do respond to the incentives outlined here, additional funding need not lead to any decrease in reported crime rates. Police can focus resources on drug control, which can lead to both increased arrests and drug seizures as indicators of effectiveness while, simultaneously, increasing Index I crime rates suggest a greater need for police services. But these incentives have been in place since drugs were initially criminalized. Something else must have changed in 1984 to produce the significant reallocation of policing resources documented above. Indeed, something else did change, at least for the police in many states. A bureaucratically motivated policy innovation appears to have created explicit incentives for shifting resources toward drug enforcement. This innovation allowed police agencies to benefit directly through the collection of a sin tax: the police were given the opportunity to collect a tax in the form of confiscations of money and property used in or purchased with profits from the drug trade and to keep the proceeds from this tax.

18. Once a prohibition policy is in place, police have incentives to make large drug seizures in order to demonstrate their effectiveness in controlling drug-market activity. In fact, as one of their “selective distortions,” police have incentives to exaggerate the magnitude of the seizures they make. Thus, drug seizures are always reported in terms of their “estimated street value” no matter at what stage of the distribution and processing chain the seizure is made. Claiming that pure cocaine has a value equal to its retail value after it has been processed and distributed as crack is like claiming that the two or three cents worth of wheat that goes into a loaf of bread is worth the dollar consumers pay for that loaf of bread: it ignores the other inputs that must be added to turn the wheat into a marketable loaf of bread, such as transportation costs, processing costs, packaging, distribution costs, and advertising.

Police Interests in Federal Confiscations as a Sin Tax

Government seizure of property used in criminal activity is actually a long-standing practice. It was one stimulus for the king's involvement in law enforcement as early as the ninth and tenth centuries (Benson 1990), for instance, and was first used in the United States to combat smugglers who avoided import duties in the early nineteenth century. Now it is being used to combat the supply of illicit drugs. Federal officials confiscated over \$100 million in 1983, and the Comprehensive Crime Act of 1984 broadened support for the practice as the law required the Justice Department to share the proceeds with state and local agencies participating in the investigations. Perhaps as a result of the cooperation this produced, confiscations roughly doubled every year beginning in 1985, reaching a total of almost \$3 billion in cash and saleable assets, and \$2 billion in unsold assets by the end of 1992 (Levy 1996, 151).

The 1984 federal asset forfeiture law was a bureaucratically demanded innovation that allowed for an expanded interbureaucratic network of cooperation. As Breton and Wintrobe (1982, 128) explained, cooperation through informal networks, both within and across bureaucracies, is an alternative to competition. A reduction in the intensity of competition allows bureaucrats greater discretion in the pursuit of their subjective goals.¹⁹ On the surface at least, this innovation apparently allowed local law enforcement agencies to generate revenues not limited by the interbureaucratic competition for resources that arises in the local budgeting process, because the statute mandated that shared assets go directly to law enforcement agencies rather than into general funds, education funds, or other depositories mandated by many state forfeiture laws. An increase in the revenues from drug-related seizures creates the potential for bureaucratic managers to expand their discretionary budget, thereby enhancing their own well-being directly and indirectly by rewarding supporters in the managers' networks with various "perks" (Breton and Wintrobe 1982, 137). After all, police have considerable discretion in how they allocate the resources they control, and monitoring generally does not limit their discretion in any substantial way.²⁰ Therefore, inasmuch as this new source of revenue has

19. The role of informal networks within and across bureaucracies is very important in the Breton-Wintrobe model (1982, 78-87, 99-106). These networks are the nonmarket institutions of exchange through which individual bureaucrats cooperate in order to obtain benefits. Thus, competition for positions in networks is also an important determinant of bureaucratic behavior (Breton and Wintrobe 1982, 99), and to the extent that this expanded network is able to generate more benefits for bureaucrats, competition to enter the network should intensify. However, competition for positions within a network actually tends to increase the potential for discretionary or selective behavior in Breton and Wintrobe's model (1982, 103).

20. Stumpf (1988, 327-32); Williams (1984, 77-105); Benson (1990, 132-46, 163-68); Rasmussen and Benson (1994, 32-37).

increased the police's ability to control resources, it has probably increased their discretionary ability to generate perks.

Forfeiture has an obvious potential deterrent value in that it raises the costs associated with drug offenses. Indeed, the justification for asset seizures is precisely the same as the justification for an explicit excise tax on sin. The activity being taxed should be reduced as a consequence of the tax, whether the tax is explicit in the form of an excise charge on the legal sale of the sinful commodity or implicit in the form of the seizure of assets arising from the illicit sale of the sinful commodity. Sin taxes are also justified as a source of revenue that can be used to help correct the problems arising from the sin. Thus, cigarette taxes are often contended to be an appropriate source of revenue to fund health care due to alleged health costs arising from smoking. Similarly, because drugs allegedly cause crime, forfeiture policies that allocate the resulting revenues to law enforcement are said to be justified in that they can be used to recoup public moneys spent on enforcement of drug-induced crime. A manual designed to help jurisdictions develop a forfeiture capability (National Criminal Justice Association 1988) emphasized this practical aspect. Pointing out that less tangible law enforcement effects (such as deterrence) should be counted as benefits, the manual emphasized that the determining factor for pursuit of a forfeiture is "the jurisdiction's best interest" (40; emphasis added). This interest, of course, is viewed from the perspective of law enforcement agencies, a view that might put somewhat more weight on benefits for bureaucrats and somewhat lesser weight on communitywide (and uncertain) benefit of deterrence effects. After all, as Stumpf (1988) noted, we must "look past the external political and social determinants of criminal justice procedures and policies to understand the system in operation. The process is staffed by professionals and quasi-professionals who have their own agenda...[and] largely internal imperatives may be of even greater importance in explaining their outcomes" (316; see also Blumberg [1979]; Benson [1990]; and Rasmussen and Benson [1994]). Indeed, if forfeitures are in the "public interest" because of deterrent impacts, and if police are exclusively motivated to serve the public interest, then they should willingly cooperate in forfeiture efforts no matter what government agency's budget is enhanced by these seizures. The 1984 federal confiscations legislation directed that all shared seizures go to law enforcement, however, because of lobbying efforts by law enforcement bureaucracies, and subsequent efforts to overturn this aspect of the legislation have been vehemently opposed by these same bureaucracies.

The 1984 federal confiscations legislation followed a period of active advocacy by federal, state, and local law enforcement officials, who emphasized that it would foster cooperation between their agencies and increase the overall effort devoted to and the effectiveness of drug control; that is, law enforcement bureaus maintained that they needed to be paid to cooperate, whether the cooperation was in the public interest or not. For instance, in hearings on the Comprehensive Drug Penalty Act held before

the Subcommittee on Crime of the Committee on the Judiciary of the U.S. House of Representatives, held 23 June and 14 October 1983, much of the testimony focused exclusively on the confiscations and forfeitures issue (U.S. House 1985). Among the organizations and bureaucracies presenting testimony in support of the forfeitures-sharing arrangement were the U.S. Customs Service, various police departments and sheriffs, the U.S. attorney's office from the Southern District of Florida, and the U.S. Drug Enforcement Administration. There was no representation of local government oversight authorities (mayors, city councils, county commissions) either supporting or objecting to such legislation. Furthermore, when the innovation was first introduced it appears that most non-law-enforcement bureaucrats did not anticipate its implications, probably due to the poor "quality" of information selectively released to these rivals by law enforcement bureaucracies and their congressional supporters. The only group that suggested problems with the legislation was the Criminal Justice Section of the American Bar Association. Two groups involved in drug therapy (the Therapy Committees of America, and the Alcohol and Drug Problems Association) also supported forfeitures sharing, but proposed that a share also go to drug therapy programs. The law enforcement lobbies prevailed.

Following passage of the initial law, interbureaucratic competition for the rights to seized assets, as defined by federal statutes, intensified. It became clear to state and local bureaucrats who compete with the law enforcement sector for the control of resources that the federal legislation was being used to circumvent state laws and constitutions prohibiting certain forfeitures or limiting law enforcement use of seizures. For example, North Carolina law requires that all proceeds from confiscated assets go to the County School Fund. Law enforcement agencies in North Carolina, and in other states where state law limited their ability to benefit from confiscations, began using the 1984 federal legislation to circumvent their states' laws by routinely arranging for federal "adoption" of forfeitures so they could be passed back to the state and local law enforcement agencies. As education bureaucrats and others affected by this diversion of benefits recognized what was going on, they began to advocate a change in the federal law. They were successful, at least initially: the Anti-Drug Abuse Act of 1988 (passed on 18 November 1988) changed the asset forfeitures provisions established in 1984. Section 6077 of the 1988 statute stated that the attorney general must assure that any forfeiture transferred to a state or local law enforcement agency "is not so transferred to circumvent any requirement of state law that prohibits forfeiture or limits use or disposition of property forfeited to state or local agencies." This provision was designated to go into effect on 1 October 1989, and the Department of Justice interpreted it to mandate an end to all adoptive forfeitures (U.S. House 1990, 166).

State and local law enforcement officials immediately began advocating repeal of Section 6077. Thus, the Subcommittee on Crime heard testimony on 24 April 1989 advocating repeal of Section 6077 from such groups as the

International Association of Chiefs of Police, the Florida Department of Law Enforcement, the North Carolina Department of Crime Control and Public Safety, and the U.S. attorney general's office. Perhaps the most impassioned plea for repeal was made by Joseph W. Dean of the North Carolina Department of Crime Control and Public Safety (U.S. House 1990, 20–28),²¹ who admitted both that law enforcement bureaucracies were using the federal law to circumvent the state's constitution and that, without the benefits of confiscations going to those bureaus, substantially less effort would be made to control drugs:

Currently the United States Attorney General, by policy, requires that all shared property be used by the transfer for law enforcement purposes. The conflict between state and federal law [given Section 6077 of the 1988 Act] would prevent the federal government from adopting seizures by state and local agencies.

...This provision would have a devastating impact on joint efforts by federal, state and local law enforcement agencies not only in North Carolina but also in other affected states...

Education is any state's biggest business. The education lobby is the most powerful in the state and has taken a position against law enforcement being able to share in seized assets. The irony is that if local and state law enforcement agencies cannot share, the assets will in all likelihood not be seized and forfeited. Thus no one wins but the drug trafficker...

...If this financial sharing stops, we will kill the goose that laid the golden egg.

This statement clearly suggests that law enforcement agencies focus resources on enforcement of drug laws because of the financial gains for the agencies arising from forfeitures. Perhaps the stimulus for this practice was not that drugs are illegal, or that the president had declared the war on drugs, which induced the massive post-1984 policy effort against them, but rather the 1984 legislation that mandated that forfeitures generate benefits for police.

The implication that law enforcement agencies benefit from the discretion arising through forfeitures was also corroborated by other testimony, including that of the commissioner of the Florida Department of Law Enforcement (FDLE) (U.S. House 1990, 13–14). In fact, a statement by the U.S. attorney for the Eastern District of North Carolina, in support of repealing Section 6077, actually implied that law enforcement agencies were focusing on confiscations as opposed to criminal convictions (U.S. House 1990): “Drug agents would have much less incentive to follow through on the asset potentially held by drug traffickers, since there would be no reward

21. Recall that North Carolina requires that all forfeited assets go to education.

for such efforts, and would concentrate their time and resources on the criminal prosecution" (26).

Indeed, forfeitures can be successful even if arrest and prosecution are not. Forfeiture laws are supposedly designed to protect lien holders and owners whose property is used without their knowledge or consent, but owners' rights are tenuous because most states prohibit suits claiming that the property was wrongfully taken. This prohibition, coupled with the fact that the procedure takes place in a civil forfeiture hearing, diminishes the capacity of property owners to defend themselves. Generally, owners whose property is alleged to have been used in a drug offense or purchased with the proceeds from drug trafficking have the burden of establishing that they merit relief from the forfeiture proceeding (National Criminal Justice Association 1988, 41). The owners must prove not only that they are innocent of the alleged crime, but that they lacked both knowledge of and control over the property's unlawful use if someone else used it for criminal purposes. For example, if a drug seller places a drug order by phone from a friend's business, that property can be seized unless the owner proves lack of both knowledge and control. Thus, forfeiture activity can be a lucrative source of revenue for a police agency, without regard for the actual criminality of the potential victim of such seizures. The power of confiscation is shown by a March 1991 drug raid in which federal agents confiscated three University of Virginia fraternity houses after they seized drugs valued at a few hundred dollars. The houses were valued at \$1 million, and the rents from these buildings were subsequently paid to the U.S. Justice Department.²²

Many law enforcement agencies have benefited from asset seizure laws. More than 90 percent of the police departments with jurisdictions containing populations of 50,000 or more and more than 90 percent of the sheriffs' departments serving populations of 250,000 or more received money or goods from a drug asset forfeiture program in 1990 (Reaves 1992, 1). Furthermore, the Drug Enforcement Administration seizes millions of dollars at ports, airports, and bus stations. Congress began investigating alleged abuses by the DEA in May 1992. Indeed, asset forfeiture by law enforcement agencies has become increasingly controversial throughout the nation. Highly publicized criticism in the print and electronic media has raised constitutional issues such as the erosion of Fourth Amendment rights, protection of innocent parties, and the proportionality of punishment to the crime. Whether large portions of the seizures come from criminals or not cannot be determined because many seizures do not involve arrests, and the costs associated with recovering wrongfully seized assets from federal authorities can run into thousands of dollars. Despite widespread misuse of

22. "Turning Drug Busts into a Profit Center," Washington Post Weekly Edition, 19 April 1991. In a series of Orlando Sentinel articles during June 1992, Jeff Brazil and Steve Berry describe, in vivid detail, the asset seizure program in Volusia County, Florida, which netted over \$8 million in four years.

the forfeiture laws all over the country,²³ however, the police lobbies won the battle over federal legislation. Section 6077 of the Anti-Drug Abuse Act of 1988 never went into effect. Its repeal was hidden in the 1990 Defense Appropriations bill, and the repeal was made retroactive to 1 October 1989. It appears that the police bureaucrats have won the competition over the property rights to forfeitures, at least as it has been waged at the federal level.

Competitors for budgets at the local level may recognize the significant discretionary gains police enjoy as a consequence of asset seizures. If they do, then they might be able to convince local sponsors that police budgets should be reduced accordingly; that is, change procedures so returns from asset forfeiture do not necessarily represent a net gain to local police agencies even when they are given to the agencies. Pressure from other local bureaucrats competing for resources may lead administrators and politicians with whom bureaucrats bargain for agency budgets to view the flow of money from seizures as a substitute for regular budget increments. After all, one alleged purpose of asset forfeitures is to make drug enforcement efforts to a degree self-financing. If these gains are fungible in the budget bargaining and review process, and local commissions, councils, or mayors face strong pressures to take full advantage of this possibility, these officials could refuse to approve police budgets that are not reduced to offset expected confiscations.

Asset Seizures and Police Discretionary Budgets

The extent to which police agencies can increase their budgets via forfeiture activity is explored in Benson, Rasmussen, and Sollars (1995) using data from Florida policing jurisdictions. Confiscations were found to have a significant positive impact on police agencies' budgets after accounting for demand and local government budget-constraint factors. As expected, the impact was larger in more populous jurisdictions. It appears that forfeitures offer police an attractive policy option: an activity that can be justified politically because of its potential strong deterrent effect and because it suggests that drug enforcement is, to a degree, self-financing, while it generates direct benefits to the police bureaucracy by increasing the bureau's discretionary budget. Relatively small amounts of money from seized assets can mean substantial increases in budget discretion.

Florida data provide an indication of the importance of confiscations as a source of discretionary spending. The estimated elasticity of noncapital expenditures with respect to confiscations is 0.04 for all jurisdictions and 0.07 for the larger ones (Benson, Rasmussen, and Sollars 1995), but this seemingly modest elasticity belies the potentially large impact of asset

23. Dennis Cauchon and Gary Fields demonstrated this in a series of articles on "Abusing Forfeiture Laws" in *USA Today*, 18 May 1992. See also Brazil and Berry's commentary in the *Orlando Sentinel* appearing on various dates in June 1992.

forfeiture on decision making, since only a small fraction of noncapital expenditures is discretionary. The elasticity of discretionary spending with respect to confiscations can be approximated as the estimated elasticity divided by the proportion of all discretionary noncapital expenditures. Thus, if 10 percent of noncapital expenditures are discretionary, the relevant elasticity lies in the 0.4 to 0.7 range. Because the portion of budgets committed to specific uses is probably larger than assumed here, these figures most likely represent a significant underestimate of the impact confiscated assets can have on the discretionary budget. These results, combined with the evidence of more intense drug enforcement after 1984, are consistent with the hypothesis that police have incentives to respond to the Comprehensive Crime Act of 1984 by focusing on drug enforcement.

The asset forfeiture provisions of the federal statute created an exogenous change in state and local law enforcement agencies' bureaucratic incentives, inducing them to join in the federally declared war on drugs. Police agencies seeking to increase their budget discretion were encouraged to use an increasing portion of their resources against drug offenders and to devote fewer resources to other crimes. Thus, changes in police behavior since 1984 are consistent with the proposition that these agencies responded to the incentives created by this law. The relative allocation of state and local law enforcement resources has shifted dramatically toward drug enforcement, the major source of asset confiscations. Therefore, sin taxes continue to be an integral part of public policy toward drug markets, despite the fact that criminalization of narcotics and marijuana has occurred. When a sin is legal the sin tax is called an excise tax; when the sin is illegal the sin tax is called asset seizure or asset forfeiture. Sin taxes are intended to alter the behavior of sinners but, as explained here, the allocation of the resulting revenues can have a dramatic effect on the behavior of the tax collectors. The resulting practice of predatory public finance can be seen by looking at the interstate variation in asset seizure laws and drug enforcement policy.

Differences in Drug Enforcement Across States and Cities

The federal confiscations statute appears to help explain the nationwide conduct of a drug war, but it does not explain the large differences in drug enforcement activities across states detailed in table 1. However, under the federal adoption procedures, federal authorities keep 20 percent of the confiscated assets they handle. Thus, there are incentives for police to avoid federal adoptions if their state laws allow them to keep seized assets, as the laws do in a number of states. In fact, the importance of the federal statute receded by 1990, as many state legislatures followed the federal government's lead and police bureaucrats' demands by incorporating the forfeiture process into their standard law enforcement procedures. Now many more states have

a forfeiture statute that allows expanded opportunities for seizures and directs the proceeds toward law enforcement. Items most often subject to seizure include material used in drug production, paraphernalia, containers, motor vehicles, and money, but most states now also allow confiscation of real estate used in the "furtherance of illegal drug activity." Only seven states allowed confiscation of real estate in 1984, but statutory changes increased this number to 17 by 1988, and it reached 43 in 1991. Beyond that, a growing number of states have more general forfeiture provisions, allowing seizure for nondrug "contraband" offenses and felonies. State racketeering laws that authorize the forfeiture of property obtained as a result of numerous illegal activities are even more conducive to law enforcement interest. Nonetheless, state statutes are not all as accommodating to police as the federal statute, leaving the federal law a useful vehicle by which many police bureaucracies can enhance their discretionary budgets.

Given the variation in state laws regarding forfeitures and the costs associated with using the federal authorities, it might be that these factors help explain the cross-state variation in drug enforcement activities. Rasmussen, Benson, and Mast (1994) explored this issue using a reduced-form econometric model of the demand for and supply of drug enforcement in a sample of large U.S. cities. Included in the model are variables that control for the extent of drug use, the opportunity cost of police resources, and socioeconomic factors affecting the demand for drug enforcement. The variable of principal interest is the presence of a confiscation law that permits police to keep some of the proceeds from seized assets. They report that the level of drug use, as measured by the percentage of arrestees testing positive for any illicit drug use, is a highly significant determinant of drug arrests. More important for our purposes here, they found that a state law that allows the police to keep any portion of seized assets was associated with significantly more emphasis on drug arrests. Indeed, the laws have a large and important impact on the allocation of police resources: the existence of a confiscation law favorable to the police raises the drug arrests/total arrests ratio between 35 and 50 percent, depending on the model specification. Allowing police to profit from the confiscation of assets from alleged drug offenders apparently provides a powerful incentive to law enforcement agencies, thereby changing agency behavior.

Conclusions: The Drug War Winds Down

Escalation of the war on drugs, when measured by drug arrests relative to Index I arrests, apparently ended in 1989. In the United States the drug arrest/Index I arrest ratio fell from 0.46 in 1989 to a 1990 figure of 0.36, a decline of 24 percent. This decline in drug enforcement is not inconsistent with bureaucratic incentives, however, including those created by asset forfeiture legislation. Police may simply be arresting "smarter," for example, concentrating on drug offenders with some potential yield via forfeiture. For

instance, if police agencies are seeking seizure opportunities, they are likely to reduce juvenile arrests relative to adult arrests, as youthful offenders are less likely to own property that can be seized. This implication is particularly interesting because, from a theoretical perspective, increasing juvenile participation in the drug trade can be expected during the period of rising drug enforcement. The war on drugs included greater arrest rates for drug offenses, a greater probability of conviction given arrest, and longer sentences, but these increased costs were imposed primarily on adults rather than juveniles, who generally received relatively lenient sentences for identical offenses. Therefore, drug traffickers had increasing incentives to reduce their risk by both lengthening the distribution chain and using more juveniles in the process. Yet, in the United States, persons under eighteen accounted for 11.95 percent of all drug arrests in 1984 but only 7.47 percent in 1990, a 37 percent decline. This reallocation of police effort against drugs is consistent with the hypothesis that police have been increasingly interested in the agency yield from drug enforcement through the seizure of assets. As a high-ranking U.S. antidrug official recently noted: "Increasingly, you're seeing supervisors of cases saying, 'Well, what can we seize?' when they're trying to decide what to investigate. They're paying more attention to the revenues they can get...and it's skewing the cases they get involved in."²⁴

It is also possible that opportunities for seizures are being reduced as drug market entrepreneurs adjust to the increasing focus on confiscations. For instance, marijuana growers are increasingly using national forests and other public lands rather than private land because "this technique precludes the use by the government of the legal remedy of confiscation of the land on which the illegal activity is being perpetrated" (Office of the Attorney General 1989, 12). Drug dealers can rent or lease houses, apartments, cars, and other assets rather than purchase them, and hide assets abroad. Indeed, increasingly sophisticated efforts to hide assets (e.g., money laundering) make seizures more and more costly.

Another factor may be the growing recognition that the drug war has not been living up to its billings. Indeed, public opinion in support of the drug war has decreased since 1989. Opinion polls report a consistent public preference for tougher treatment of criminals. But despite this trend, preferences regarding drug policy are becoming much more ambiguous, and they do not necessarily support a law enforcement approach to the problem. Public opinion might be expected to support the continued "get-tough" policies against drugs if claims promulgated by law enforcement interests that such a focus would reduce other kinds of crime were widely accepted. However, it is becoming increasingly clear that the war on drugs is not being won, and that the negative consequences of the war are substantial.

24. "Turning Drug Busts into a Profit Center," *Washington Post Weekly Edition*, 19 April 1991, 32.

Today, for example, many states are wrestling with the prison-crowding problem, which many citizens recognize is at least in part a consequence of the get-tough policies against drugs that occurred during the 1984–89 period, including the large increases in arrests and convictions and the longer mandatory sentences. The Florida legislature was forced to hold a special session in 1993 in order to allocate more funds to prison construction and avoid the “gridlock” that was anticipated late in 1993, when no criminals eligible for early release would remain in the system (many prisoners cannot be released early under statutes regarding habitual offenders and various specific crimes, many of which are drug related), and the 1994 legislature allocated funds to expand the state’s prison system by an additional 27 percent. Given recognition that drug enforcement policy is a major determinant of recent trends in prison crowding, and that the drug war has not produced the benefits its supporters claimed it would, public opinion may turn against the drug war.²⁵ It is clearly the case that the media have begun to focus on some negative consequences of the drug war, and the media’s change in focus seems to reflect changing public sentiments.²⁶

In the face of apparent growing recognition by taxpayers that the war on drugs has not achieved its exaggerated purposes, police may be reducing their drug control efforts in order to control nondrug crimes. After all, as Breton and Wintrobe (1982, 149) noted, with the passage of time, the perceived responsibility for the failure of a policy (e.g., crime control through the control of drug-market activity) shifts from outside forces (e.g., the drug dealers, the recession, and so on) to the government and, within the government, to the bureaucracy, so pressure arises for bureaucrats to account for what is going on. Indeed, prison officials are now starting to blame the

25. When asked about the most effective way to deal with the drug problem, survey respondents generally favor treatment over incarceration. Fifty-seven percent of survey respondents in 1989 thought building more federal prisons would not reduce illegal drug use, for example, while 80 percent thought more money for drug treatment would be effective. Over 90 percent responded that more spending on drug education in schools would be effective in reducing drug use (Department of Justice 1991, table 2.95). A 1990 Gallup Poll revealed similar skepticism of the efficacy of arresting drug offenders. Only 4 percent believed the most money should be spent on arresting users, and 19 percent thought arresting sellers was the most effective use of resources. In contrast, 40 percent thought early education was the best way to combat drug use (treatment to overcome addiction was preferred by only 5 percent of respondents in this poll, however; Department of Justice 1991, table 2.96).

26. For example, the Tallahassee Democrat has picked up a number of stories from other newspapers and news services with themes such as those in the following sampling: (1) from Knight-Ridder’s Washington Bureau: Aaron Epstein, “Tide of Opinion Turns against Harsh Sentencing for Drug Offenders,” 7 May 1993, 4A; (2) from the Associated Press: Michael White, “Cases Indicate the War on Drugs May Be Overdoing It,” 2 November 1992, 3A; (3) from the Chicago Tribune: Jon Margolis, “Punishment Should Fit Drug Crime,” 5 July 1991, 15A; and (4) from the Miami Herald: Ronnie Greene, “Skip Town, Judge Tells Drug Suspect,” 8 October 1992, 4C. Further, asset seizure policies have received significant negative coverage. It is not obvious whether the media are leading or following public opinion in this regard.

war on drugs for the consequences of their early release programs. Consider the example of Frank Potts, who was released from the Florida prison system in 1988, after serving six years of a fifteen-year sentence for molesting an eleven-year-old girl, despite the report of a parole examiner who noted there was a very high probability of recidivism if Potts was released. He is now being held on charges of molesting another eleven-year-old girl, but in addition an intense investigation is underway regarding allegations that Potts has killed as many as thirteen people. A Florida Department of Corrections spokesperson explained the early release by noting that “the agency is bound by mandates from the courts and the legislature. In the mid-1980s, the prison system was inundated with inmates carrying minimum mandatory sentences during the country’s initial skirmishes in the war on drugs.”²⁷ Thus, policies tend to cycle. An uninformed public can be misled by bureaucrats and policymakers for a while, as the agencies push their own agenda, but if the policy does not work it will ultimately have to be altered in recognition of its failure. This does not mean that a rollback to the pre-1984 level of drug enforcement is to be expected, but it does suggest that the increase in drug enforcement over the 1984–89 period cannot be sustained indefinitely.

Another important consideration for police in their increasing emphasis on nondrug crime after 1989 is that “a growing number of states, such as Texas, Florida, and New Jersey, apply their forfeiture laws to any criminal activity” (Reed 1992, 2). Police have learned from their drug forfeiture experience that seizures can be very lucrative. The 1984 federal statute pertained to drug crime alone, but with changes in state laws, forfeitures are increasingly targeted at property owners in general, not just criminally culpable property owners engaged in drug market activities. A family home is fair game in some jurisdictions, for instance, if anyone (e.g., a son, relative, or friend of the owner or of the owner’s family) uses the property unlawfully. But the spread of forfeiture activities to nondrug crime areas means “that property owners must police their property against all such activity, drug related or not” (Reed 1992, 2). In effect, property owners are being forced to act for the police in preventing all sorts of crimes on their property, and failure to do so can result in a very high tax—*forfeiture of the person’s property*. With the ever-broadening scope of forfeiture possibilities, drug activity may become a less important target of police efforts, at the same time as it is probably becoming a more difficult target to attack and a politically less viable policy to stress. Thus, a relative winding down of the drug war appears to be the product of the same forces that led to its escalation: changing incentives that affect police bureaucrats, including the opportunity to collect sin taxes from sins other than those associated with drug markets.

27. Associated Press, “Probe: Potts Granted Early Release,” Tallahassee Democrat, 10 May 1994, 5B.

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