introduction

Eighteen-year-old Edward James Clary was up for sentencing in federal court.[1] He had been convicted of possession of crack cocaine with intent to distribute. Clary's demographics were typical of the drug defendants who came through the federal District Court for the Eastern District of Missouri: young, Black, male, of limited education, and without regular employment. His home was the inner city of East St. Louis, which was over 97 percent African American and an economic disaster area in which drug dealing and prostitution were significant sources of income. Clary was younger than some East St. Louis drug defendants—seventeen when he was caught carrying crack cocaine on the plane trip home after visiting his older brother in California. The small packet he carried contained 4 grams of crack, a form of cocaine base derived from powder cocaine, mixed in with 16 grams of an inert substance. The mixture had melted into an unsalable blob by the time of Clary's arrest.

With no previous convictions, Clary might have seemed an unlikely candidate for a long sentence. The public defender described him as "a goofy kid." But neither youth nor inexperience could save him. Federal legislation prescribed mandatory sentences for offenses involving crack cocaine. The law required a ten-year minimum term of imprisonment for anyone caught with 50 or more grams of a material containing cocaine base, whatever its purity. It was February 1994, and Clary was about to become another depressing statistic in the nation's seemingly permanent war on drugs.

The anti-crack initiative that prescribed ten years of imprisonment for young Clary is part of a broader policy of imprisonment that emerged in the 1970s and 1980s. This imprisonment initiative has since expanded and become entrenched in the American polity. In 2005, the United States reached a new high of 2.1 million inmates, with six times as many Americans locked

up as thirty years ago (Mauer 2006, 20). Striking racial differences are evident in this movement toward increasing imprisonment. In 2003, nearly 8 percent of all adult African American males in the United States were incarcerated on any given day; for young men in their late twenties, the rate is now over 12 percent. Mauer projects that an African American male born in 2001 has a 32 percent chance of imprisonment at some point in his life, compared to a 17 percent chance for a Hispanic boy and a 6 percent chance for a white boy (2006, 137).

These are remarkable statistics. How did the United States come to rely so heavily on imprisonment, and why has the burden of punishment fallen so heavily on African Americans and, to a lesser extent, on Hispanics? Sociologist Darnell Hawkins describes a "best of times/worst of times" situation for African Americans: "Confronting the nation is the irony and seeming inconsistency of a large and growing racial disparity in the administration of justice amid evidence of black socioeconomic progress and reductions in many of the more blatant forms of interracial conflict that have historically characterized American race and ethnic relations" (2003, 433, 434). For Hawkins, these questions are related to others about the stubborn persistence of racial inequality in educational attainment, labor-force participation, earnings, family structure, home ownership, health, and other aspects of social well-being.

There is no dearth of scholarship and speculation about why racial inequality is proving so durable decades after a major civil rights struggle that has been widely hailed as successful. This book is part of that broad-based quest. The fundamental question is whether the United States has developed a fully functioning democracy, based on equal respect for all members, or whether it remains, in important respects, a racial state where opportunities are hierarchically organized to benefit some groups at the expense of others (Bonilla-Silva 1996; Brown et al. 2003; Smith 1997). More precisely, this book asks whether the law that Congress produced to control one particular crime, abuse of crack cocaine, reflects what Eduardo Bonilla-Silva calls "a racialized social system" in which the racial categories to which people are assigned partially determine their placement in the economic, political, and social order (1996, 469). Beliefs and practices that create racial disadvantage are particularly important with respect to crime and punishment, where the stakes are sometimes literally life and death.

By focusing on a law that has had an undeniable and serious racial impact, it may be possible to understand how race matters. The case of crack cocaine is important not just because African Americans (and, increasingly, Latinos)

have been so affected, but because it has engaged all three branches of our legal system, and because it has endured for over two decades despite its racial impact. But in looking at the relationship between race and illicit drugs in historical context, it becomes obvious that this is not so unusual. Racial minorities have always been the target of the harshest drug laws. Those who have actively promoted these laws, the moral entrepreneurs of drug legislation, have relied on racial slurs and allusions to bolster their arguments for criminal controls. The history of the debate over illicit drugs thus provides relevant context and a plausible explanation for the current legislative assault on crack cocaine.

Whether or not one is prepared to believe that law in this post–civil rights era could be designed to incorporate and perpetuate racial oppression, it cannot be denied that race has been relevant in the federal government's war on crack. Since its "discovery" in the 1980s, crack has been associated with African Americans in poor, inner-city neighborhoods. Fear that crack use would spread beyond the ghetto was a key motivator for criminal sanctions (Reeves and Campbell 1994; Gordon 1994; Beckett and Sasson 1998).

The public image of crack as an inner-city drug has been strengthened by the way police and prosecutors have enforced the law. Police resources have been overwhelmingly concentrated on poor minority neighborhoods like East St. Louis, where Clary lived (Mauer 2006, 165; Beckett et al. 2006; Blumstein 1993; Davis 2005; Miller 1996; Tonry 1995; cf. Blakeslee 2005). In most other respects, these neighborhoods remain an isolated "other America" where the expanding economy of the 1990s had virtually no impact.[2] In areas like East St. Louis, recent surveys indicate, over half of the young people drop out of high school and are unable to find legitimate employment. The rate of joblessness among young Black men rose from 65 percent to 72 percent between 2000 and 2004. By their mid-thirties, over 60 percent of them have served time in prison.[3]

It might seem surprising that a drug so associated with the urban underclass would draw lawmakers into a frenzy of legislative activity. Crack was somehow threatening enough that both the states and the federal government have deployed their most powerful weapons against it: felony status for all offenses, onerous sentences for even minor violations, broad federal jurisdiction usually reserved for serious criminal activity, and a well-funded enforcement apparatus with incentives for vigorous investigation and arrest. Penalties are much more severe than for any other drug. Crack, in fact, is punished more severely in the federal system, with an average term of 103.5 months, almost nine years, than most violent offenses (U.S. Sentencing

Commission 2002). The mandatory sentences minimize any discretion judges might otherwise exercise in light of extenuating circumstances like youth and poverty. Anti-crack legislation, as the Clary case illustrates, is intentionally sweeping in its reach. Even a seventeen-year-old youngster involved in a minor drug deal is subject to severe mandatory punishment.

The contrast with crack's pharmacological twin, powder cocaine, is noteworthy. Crack is made by dissolving powder cocaine in a solution of sodium bicarbonate and water and boiling it, which creates a solid substance that can easily be sold in small quantities to be smoked for a rapid, euphoric high. The Drug Enforcement Administration estimates that crack rocks are between 75 percent and 90 percent pure cocaine. Yet under federal law, it takes one hundred times more powder cocaine to elicit the same prison term as would a mixture containing crack.

It is important to understand how crack came to be punished with such severity, and why such a policy has survived, virtually undisturbed, for over two decades in the face of unprecedented levels of racially unbalanced imprisonment. As policy analyst Ryan King notes: "In 2003, 81 percent of those sentenced for crack cocaine offenses were African American, despite the fact that the greatest number of documented crack users are white" (2006, 5).[4] In the estimation of the U.S. Sentencing Commission: "This one sentencing rule contributes more to the differences in average sentences between African-American and White offenders than any possible effect of discrimination. Revising the crack cocaine thresholds would better reduce the gap than any other single policy change, and it would dramatically improve the fairness of the federal sentencing system" (2003, 132).

These facts are part of the public record and are well known. Crack laws have been the subject of strong criticism from some respected quarters, including international human rights organizations. Considerable scholarly effort has been devoted to documenting the failure of drug prohibition and the consequences associated with continuing the current approach (see, e.g., Lusane 1991; Musto 1999; Donziger 1996; Miller 1996; Tonry 1995; Chambliss 2003). Increasingly, investigators are also studying how race matters in enforcement of the drug laws (see, e.g., Beckett et al. 2006; Davis 2005).

Imprisonment continues as the favored solution to the war on drugs, not because it has been effective in reducing drug abuse, but because it supports other political goals. As Patricia Erickson and Jennifer Butters observe: "As a social policy directed at reducing the harms of drugs, prohibition is a failure. As an ideology, it must be regarded as one of the great success stories

of the twentieth century" (1998, 177). William Chambliss is more explicit in his indictment of the war on drugs:

> The war on drugs is a failure by any objective measure. It has not reduced drug consumption, the prevalence of drug-selling gangs, the production of new products for consumers, or the volume of drugs flowing into the United States. It has been successful, however, in legitimating the creation of a virtual police state in the ghettoes of our cities. (2003, 315)

Yet the laws endure, and those who permit them to endure are not castigated as racist. Racial impact is treated legally and politically as an irrelevancy, a collateral effect of the war on drugs. Nor is the origin of these harsh laws considered suspect, even though they were quite obviously a panicky reaction to a drug scare with strong racial overtones. How can this be so in a nation that guarantees equal protection of its laws?

Explaining the Persistence of the War on Drugs

The most striking aspect of this policy, and arguably the one most worthy of study, has become clear only with the passage of time: its persistence. It is clear now that the lack of positive results, harshness, and very disproportionate impact on vulnerable communities count for little. Why does public opinion continue to support tough drug laws, even in the face of general awareness that a highly punitive approach is expensive and has failed to stem the drug trade? Why do lawmakers refuse to consider a change of direction? Why is it no longer news that poor minorities pay the largest price for this approach to drug control in their roles as residents of drug-plagued neighborhoods and as the persons most at risk for arrest, prosecution, and harsh punishment?

The normalization of a policy that works such disadvantages on minority populations is particularly striking in the context of the nation's much-touted commitment to equal opportunity. The paradox is that federal, state, and local governments claim to be, and to some extent are, actively committed to racial equality, while at the same time supporting policies that condemn a young man like Clary to a ten-year prison term for a relatively minor offense. Increasing racial diversity is public policy in every institution except the prisons, where crack laws have helped to Blacken the population to unprecedented levels.[5] The growing racial skew in imprisonment also has had pernicious effects on minority voting power. Nearly every state temporarily or permanently disenfranchises persons convicted of serious crimes,

including selling and using illicit drugs. Current anti-drug initiatives are thus undermining a central plank of the civil rights movement and a fundamental tenet of American government (Manza and Uggen 2006).

The nation's faltering war on drugs suggests at least three areas for critical inquiry:

- The appropriate role of punishment in combating dangerous drugs. Why has the United States invested so heavily in this approach?
- Racial differences in punishment. Do they reflect racial difference in involvement with dangerous drugs? If not, why not?
- Effectiveness in reducing drug abuse. Harsh punishments, particularly when they fall on the shoulders of disadvantaged minorities, must be effective if they can be justified at all. Has this standard been met?

It is sometimes argued, incorrectly, that the racial impact of the drug laws is simply an artifact of racial differences in offending, an argument that overlooks racially skewed patterns of law enforcement that target some minority communities for greater surveillance and aggressive arrest policies (Beckett et al. 2006). Also overlooked is the relative insulation from police surveillance enjoyed by student drug dealers, who are generally white and from relatively privileged backgrounds (see, e.g., Mohamed and Fritsvold 2006). Their activities escape notice because they occur out of sight of law enforcement; Troy Duster observes: "Police police the streets" (1997, 265).

Nevertheless, many people believe that whatever differences there might be in police practices, the primary problem is that African Americans are "the cultural architects of their own disadvantage" (Bobo and Smith 1998, 212). Brown et al. (2003) describe a profound racial divide in the United States over the meaning of race: "'Racial realists' like Abigail and Stephen Thernstrom believe that the economic divide is over-rated and that racism is, for the most part, a thing of the past. From the perspective of 'racial realists,' those who insist on calling attention to racism and who push racially conscious programs like affirmative action are whipping up racial consciousness and slowing progress toward a society in which race is completely irrelevant" (Brown et al. 2003, 6–9).

But even those who believe racism is fading into insignificance should question why officials have allowed the current failed policy to continue in the face of its manifest shortcomings. Somehow the people at risk for drastic penalties—the Edward James Clarys of our society—have become so marginalized that they have ceased to be objects of public concern. If all citizens were valued, the war on drugs would have to be considered a

deeply problematic approach to satisfying the important goal of effective drug control. As Mauer observes in comparing Scandinavian with American approaches to crime policy: "Communities that feel a sense of commitment to their members are able to see the humanity of offenders despite their criminal behaviors and to see the potential for positive change in their lives" (2006, 151).

Perhaps the answer to this puzzle is that the nation's historic and much-celebrated break with racial oppression has not been as profound as commonly thought. Racism in criminal law, a bitter reality during most of the nation's history, may have morphed in the 1970s rather than disappeared. The contemporary war on drugs followed suspiciously close on the heels of the civil rights movement of the 1960s and early 1970s, and, in a certain sense, grew out of it. Fear of urban disorder and rising crime rates were part of the backlash to the civil rights movement that fueled get-tough, "law and order" policies designed to increase incarceration rates for street crime and drugs (see, e.g., Beckett and Sasson 2000, chap. 4). Rogers Smith suggests that this is the way racial reform always works: "Every period of racial legal reform has been followed by a period of resistance, producing stagnation and partial reverses on the road to greater racial equality" (1999, 7).

To investigate the possibility that racism and fear of a restive underclass explain the persistence of the American war on drugs requires a critical attitude toward much of the criminal justice research on race and crime. As David Greenberg notes:

> [A] truly remarkable volume of research has been undertaken to identify and explain racial and ethnic differences in American criminal justice outcomes. On the basis of many published studies, it has become the conventional wisdom that the overrepresentation of blacks and other minorities in the criminal justice system is not *primarily* due to discrimination in law enforcement, but rather to high levels of minority involvement in those crimes that the criminal justice system regularly prosecutes." (2003, 325–26)

As important as it is to explore why racial minorities tend to be so overrepresented in U.S. prisons and jails, keeping the spotlight trained only on discrimination in law enforcement may, in the case of drug crimes at least, be too narrow a focus. Police practices like racial profiling, focusing surveillance on poor minority neighborhoods, and consensual, no-cause searches certainly deserve critical attention, but law enforcement is not the only relevant issue in exploring racial discrimination in law. Criminal statutes and those who write them also deserve critical scrutiny.

Theoretical Starting Points

Crimes do not arise out of the earth as products of nature. Crimes are defined by statutes, which are designed for particular purposes. Legislation prohibiting drug abuse should particularly draw our interest. Drug taking is a generally private activity whose destructiveness is mostly confined to individual users and their friends and families. Perhaps this is why during most of the nineteenth century, as the dangers associated with hallucinatory and habit-forming drugs began to be understood, they were considered to be medical problems. How did this private, pleasure-seeking activity become such a favorite of the criminal law? The answer, some observers suggest, implicates racism. As Musto observes: "The most passionate support for legal prohibition of narcotics has been associated with fear of a given drug's effect on a specific minority. Certain drugs were dreaded because they seemed to undermine essential social restrictions which kept these groups under control" (1999, 294).

The issue of race in drug policy, as Musto suggests, should be pursued historically and from its legislative roots. The investigation should start from the proposition that society "constructs" its own problems. That construction process is very selective, as Kevin Ryan observes: "The constructive process involves the selection of certain sets of circumstances and the treatment of them as problematic, while other sets of circumstances are ignored. A large body of research explores the dimensions of this 'picking out' process" (1998, 141). The people who do the "picking out" are moral entrepreneurs—activists who claim to represent public values as they push a specific policy agenda. Sometimes, as in the case of the war on drugs, they help to create a "moral panic" that speeds up, and may overwhelm, democratic deliberation (Cohen 1972, 2002; Goode and Ben-Yehuda 1994a). Punitive policies like the contemporary war on drugs (and its predecessor drug wars) are the typical result of moral panics. Racial minorities and those perceived to be socially deviant are typical targets for such policies and the negative media attention that accompanies them (Duster 1970; Reinarman and Levine 1997; Schneider and Ingram 1993; Neubeck and Cazenave 2001; Gilens 1999).

The constructionist approach to crime is compatible with scholarship that focuses attention on how racial and ethnic differences are made manifest and given social meaning. Race, after all, is an invented category maintained in politics and culture, not in nature: "Entire races have disappeared from view, from public discussion and from modern memory, though their flesh-and-blood members still walk the earth. What has become of the nineteenth

century's Celts and Slavs, for instance? Its Hebrews, Iberics, Mediterraneans, Teutons, and Anglo-Saxons?" (Jacobson 1998, 2). Mai Ngai notes the social and legal construction of races through restrictive immigration laws: "Race is always historically specific. At times, a confluence of economic, social, cultural, and political factors has impelled major shifts in society's understanding (and construction) of race and its constitutive role in national identity formation. The Civil War was obviously one of those times; the present multicultural moment is another" (2004, 7; and see Bonilla-Silva 1996, 472).

If race is more about maintaining social hierarchy than biology, then the crucial question is whether current understandings of race retard progress toward a post-racial democracy, or whether instead they tend to obscure structural inequities. Derrick Bell, a law professor who has devoted his career to understanding U.S. race policy, is pessimistic:

> The very visible social and economic progress made by some African Americans can no longer obscure the increasingly dismal demographics that reflect the status of most of those whose forebears in this county were slaves. Statistics on poverty, unemployment, and income support the growing concern that the slow racial advances of the 1960s and 1970s have ended, and retrogression is well under way. (1995, 2)

We are in what Kevin Brown (2005) has dubbed a "post-desegregation era" marked by increasing racial separation in some arenas, like public education, and a growing disinclination to promote equality (see Guinier and Torres 2002).

A government that venerates equality under law has a weighty responsibility to avoid creating racial and class disadvantage in the criminal justice process. The fundamental goal of crime policy, after all, is social justice, not simply efficient control of designated pathologies (Chambliss 2003, 295). Justice must be a foundational concern in research on crime. I agree with John Braithwaite's admonition to avoid both a moral relativism indifferent to social harms and a legal positivism that ignores social consequences. The goal should be explanatory theory built around the normative concerns that justify criminal law: increasing individual freedom and equality, and enhancing the quality of deliberation, procedural justice, and institutional checks and balances that preserve political institutions against corruption (Braithwaite 2000, 88).

An important question in this analysis is why appellate courts have avoided critically examining the racial implications of the war on drugs. Trial judges have urged another course, sometimes in dramatic terms. Troy

Duster, for example, describes how a San Francisco judge wept at imposing a ten-year term on a shipyard worker who carried drugs to help out a friend (1997, 261). Part of the answer lies in the concerted effort of Republican presidents, beginning with Richard Nixon, to appoint Supreme Court justices who are conservative on crime and criminal justice. In the 1970s, this effort moved to the lower federal courts, politicizing and slowing down the process of lower-court appointments (Hartley and Holmes 2002; Scherer 2005). The way cases go up on appeal also plays a role in insulating appellate judges from the day-to-day realities of drug-law enforcement, including the racial and class dimensions of a harsh sentencing law. Judicial respect for the separation of powers also tends to deter judges from interfering with legislative authority to set sentencing standards.

The issue of why courts refuse to intervene, however, runs deeper, to a judicial commitment to the idea that racism is a personal failing, what Bonilla-Silva calls "an expression of 'original sin'—as a remnant of past historical racial situations" (1996, 468). This conception of racism focuses judges on intentional acts of discrimination, as evidence of the actor's racist mental state. It leaves little room for the play of racialized fears and misunderstandings that can lead to severe sanctions in legislation. Ignoring such psychological complexities, constitutional law treats racial discrimination as a clear, conscious choice between color blindness and intended action. Racial disproportion, even when extreme, is considered irrelevant unless there is direct evidence that bad motives were at work in producing it.

There is no acknowledgment that institutions might embed racial stereotypes and disadvantage in their day-to-day operations, despite an enormous volume of social science scholarship that suggests the importance of institutionalized racism (see, e.g., Bonilla-Silva 1996; Brown et al. 2003; Frymer 2005; Mendelberg 2001; Ngai 2004; Williams 2003). Institutions provide incentives that make racism rational, as Frymer points out: "We need to examine the ways in which institutions encourage racist acts by providing rules and procedures that motivate people to behave in a racist manner or behave in a manner that motivates others to do so" (2005, 374). Those rules and procedures are powerful motivators, and at the same time, they offer an exit strategy from racism because institutions can be redesigned to make racial equity rational.

By maintaining that racism is always intentional, irrational, and personal in the face of much evidence that it is not, courts play an important role in perpetuating the war on drugs, both in the obvious practical sense of permitting it to continue and, more broadly, in supporting an ideology of color

blindness that takes little note of the evidence of structural disadvantage and institutional pathology in contemporary race and class relations.

The judicial response to challenges to the contemporary war on drugs has helped to set the public agenda on race. Courts legitimize government action (or inaction) in the United States. They have this power in part because of our constitutional structure, but also because of the determined efforts of judges over two centuries to hear and respond to the political sentiments of the day and to make their power manifest. Courts draw their power partly from their sensitivity to their own limits in the political order, but also because judges absorb the prevailing opinions of the day and act on them. They work in a symbiotic relationship with popular opinion, reinforcing it, and at the same time are reinforced in their own power by not being too distant from the mainstream.

Such institutional priorities are central to the story of how racial disadvantage has come to be inscribed in the criminal law and how large racial differences in criminal outcomes can persist without much public fanfare. Courts do not act alone. Also influential are the institutional priorities of police, prosecutors, legislators, interest groups, and administrative agencies. This is not the first study, of course, to focus attention on the capacity of institutions to maintain and promote racial inequity, despite their claims of neutrality and beneficial racial motives. But this study is unusual in paying close attention to how the relevant institutions have developed and maintained their positions over time and how, through their incentives and rules, they make racism rational. As Frymer notes, "even studies of 'institutional racism' emphasize less how institutions motivate individuals than simply making the important point that racism is located within places of power" (2005, 374).

Race in America, of course, is a much more complicated process than the contrasting opportunities between white and African American citizens. While references to other racial conflicts and dilemmas are helpful to this analysis, the focus in this study remains on the struggle over the place that African Americans will hold in the American political experiment. This issue is central in all racial conflict in this nation. Nicholas De Genova reports, for example, that the Mexican immigrants that he studied in Chicago define themselves in terms of their place in relation to African Americans and whites:

> The book's ethnographic research reveals how Mexican migrants in Chicago tended to systematically infer and consistently recapitulate a

> socially ubiquitous equation of "American"-ness with racial whiteness, to the exclusion of African Americans as well as U.S.-citizen Latinos (including Mexicans born in the United States). Mexican migrants thus negotiated their own re-racialization as Mexican, always in relation to both a dominant whiteness and its polar opposite, a subjugated and denigrated Blackness. (2005, 8)

The Organization of This Book

The set of theoretical starting points just discussed lays the foundation for the analysis that follows. Chapter 1 returns to the story of Clary and his encounter with the federal drug laws; in so doing, it illustrates all the central themes of this book. Taken to its conclusion, and buttressed with the facts of historic and contemporary drug wars, Clary's experience is a good "teaching case" for how law perpetuates racial inequality. The case and the reaction it produced at the appellate level also provide a useful framework for examining the basic elements of contemporary drug policy and a helpful context for the more institutionally focused chapters that follow. The trial judge assigned to Clary's case, Judge Clyde Cahill, did something unusual. He refused to treat the ten-year sentence prescribed for this youth as an acceptable consequence of the nation's determined effort to stamp out crack abuse. Instead, he framed Clary's predicament on the broad canvas of racist reactions to threats posed by drugs and other urban dangers. He saw the routinization of extreme punishment like Clary's as a problem in civic membership with roots in slavery and two centuries of continuing racial oppression through law.

The remainder of this book falls into three parts. The three chapters following the denouement of the Clary case trace the American experience with drug legislation, beginning with the campaign against alcohol that ended in a national Prohibition amendment. Racism and fear of a restive underclass, these chapters show, has been salient in every one of these anti-drug initiatives. Without this backdrop of racism, it is hard to imagine how the United States would have settled so quickly, and so definitively, on a highly punitive, expensive approach to drug abuse, particularly as more humane, less costly alternatives have become available. Our history of embedded racism also helps to explain the public's otherwise surprising tolerance for failed policies, even in the face of the tremendous human suffering associated with incarceration.

The campaign to prohibit alcohol consumption, one might think, was an exception to the entanglement of race and drugs. In fact, it was not, as

chapter 2 shows. Although its racial underpinnings are not commonly acknowledged, racism was a key to the success of the Prohibition campaign. It is a particularly good example because it grew out of a nineteenth-century temperance movement that was initially quite egalitarian in its aspirations. The goal was education and voluntary desistance from alcoholic drinks. All comers were welcome. The campaign turned racist when it morphed into an effort to create a punitive law. In the end, what defeated Prohibition was not a wakening sense of racial justice, but the changing demographics of drinking and the Great Depression.

Race played a better-known role in the campaigns for criminal controls on opium, marijuana, cocaine, and heroin. This effort began at about the same time that Congress was considering anti-alcohol legislation, and it drew on some of the same scare-mongering images that had begun to circulate about alcohol. The lawmaking process of this earlier era, guided by self-serving policy entrepreneurs and an uncritical news media eager for frightening stories, presaged the anti-crack campaign, but in more racially lurid terms. Opium was the drug of the seductive, secretive Chinese who spread their addiction to unsuspecting whites. Marijuana was something Mexican laborers brought with them to the United States that threatened America's young and promoted fighting among impoverished agricultural workers. Cocaine was a drug the Black underclass used that made them brazen and reckless and sometimes even invulnerable to the bullets of police officers. Chapter 3 considers these early anti-drug campaigns to show how the nation became accustomed to the paradigm of drug abuse as a crime deserving significant punishment.

The civil rights movement of the 1960s briefly drew the criminalization approach into question. Race and class disadvantage became a reason for *not* punishing drug use harshly. This moment passed in the Nixon years. Chapter 4 shows how the racial upheavals of the time affected drug policy. This chapter goes on to examine the congressional debates that led to the 1986 and 1988 federal crack laws. The old tendencies to associate dangerous drugs with dangerous minorities bent on corrupting white, law-abiding youth were much in evidence in this debate. Those who disagreed with the take-no-prisoners approach were ignored in the rush to legislate. As Michael Tonry (1995) has suggested, Congress knew, but apparently did not care, that the brunt of its harsh new laws would fall on poor, urban Blacks. Lack of concern for this fact can be laid to racial insensitivity, but also to a historically circumscribed lack of imagination.

The remaining two chapters assess the government's reaction to its own growing awareness that the war on drugs is, in effect, a war on poor, mostly

urban minorities (cf. Blakeslee 2005). The matter was debated, briefly, when the U.S. Sentencing Commission confronted Congress with the racial results of its mandatory minimum penalties. Chapter 5 covers this debate and shows how Congress deflected the Commission's proposal to lower sentences for crack offenses to the level of those for powder cocaine. The Sentencing Commission, as this chapter shows, was repeatedly rebuffed in its effort to lower penalties. These episodes reveal a Congress confident in its convictions and unconcerned about the constitutionality of its differential penalties, even when they resulted in unprecedented rates of Black imprisonment.

Chapter 6 indicates why Congress paid so little attention to constitutional strictures against racially discriminatory legislation. Appellate courts have repelled every challenge, using rules of decision that allow them to avoid looking broadly at allegations of racial bias. The issue has been joined only in trial courts, where sentencing judges come face to face with the realities of the crack cocaine policy as they sentence young offenders like Clary to long terms of imprisonment.

This analysis, taken as a whole, reveals a disturbing lack of realism about race in criminal justice policymaking and practice, and an equally disturbing disengagement in the judiciary and in the public. The need for more robust appreciation of racial disadvantage is clear, not just for the marginalized, but also for the marginalizers:

> Those who are racially marginalized are like the miner's canary: their distress is the first sign of a danger that threatens us all. It is easy enough to think that when we sacrifice this canary, the only harm is to communities of color. Yet others ignore problems that converge around racial minorities at their own peril, for these problems are symptoms warning us that we are all at risk. (Guinier and Torres 2002, 11)