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Foreword: Drug Decriminalization: A Chorus in Need of Masterrap's Voice

Dwight L. Greene
FOREWORD

DRUG DECRIMINALIZATION: A CHORUS IN NEED OF MASTERRAP'S VOICE

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“Coke is just a way for me to make some money and do some of the things I would otherwise not have the chance of doing . . . . [S]elling coke is just like any other business—you gotta work hard, stay on your toes, protect what's yours, and not f—— up with silly matters. In America you gotta have money . . . because that's what people respect.”

Masterrap, a young Dominican cocaine dealer from New York City's Washington Heights.¹

* Associate Professor of Law, Hofstra University; B.A. Wesleyan, 1970; J.D. Harvard Law School, 1974. Whatever its relevance, the author may speak through one of the choral prisms of the collective voices, see, e.g., Dalton, The Clouded Prism, 22 HARV. C.R.-C.L. L. REV. 435, 439-40 (1987) (noting the common experience of black, brown, red and yellow folks with, in the words of Coronel West, “the fishy stare on the bus”), and as one who was for years a federal prosecutor in New York City. With thanks to Professor Patricia J. Williams for her encouragement and special thanks and gratitude to Professor Twila L. Perry and a raised cup to my research assistants: David Pevney, Anthony Gamberg, Donald Rizzuto and once again, David Jimenez and Jaime Rodriguez. Dedicated to Jewel H. Bell.

1. T. WILLIAMS, THE COCAINE KIDS 20, 89 (1989). Most of the positions attributed to Masterrap throughout this Foreword are hypothetical and not those of the real Masterrap unless THE COCAINE KIDS is cited. Moreover, the use of a fictionalized Masterrap is for dramatization purposes only. The person in THE COCAINE KIDS to some degree represents some of the best and brightest of our alienated youth whose considerable but misguided entrepreneurial skills are being used to pursue a televised American dream of instant wealth, power, prestige and success. This author, however, would strenuously dispute any inference that Masterrap typifies any ethnic, racial or cultural group. Indeed, Masterrap could be any youngster, African-American, Jamaican, Chinese, East Indian, Italian, Irish or others who reasonably sees
MONEY, POWER, AND THE RESPECT THEY COMMAND compose Masterrap's American dream. For Masterrap, there is no such thing as morally colored money. All money is the same shade of green. Selling cocaine is just a business, no more and no less. To Masterrap, the ends of money, power and respect, are what count—the means used to attain them do not. Sadly, Masterrap has transmogrified an American dream of success into the hellish nightmare of the illegal drug business.\(^2\)

The participants in this Hofstra Law Review Symposium all agree that Masterrap's illegal cocaine business is not economically and socially acceptable. The focus of disagreement among the participants is what kind of drug policy should prevail in its stead. This Symposium serves as a forum for that disagreement. The disagreement is related to fundamental differences among the participants over the appropriate relationships between the government and the individual and in some cases, the government and segments of minority and other partially powerless communities. It is little wonder that this Symposium presents divergent opinions on the drug policy question: should some or all currently illegal drugs be decriminalized?

Positions on this question might be conceived as positions along a continuum shaped more like a horseshoe than a straight line. The two ideological end point extremes are closer to each other in advocating substantial drug decriminalization than they are to the more moderate positions in the middle.\(^3\) Thus, the African-American inner-city Mayor, Kurt Schmoke of Baltimore, and Milton Friedman, the conservative academic economist or William Buckley, the conservative editor of the National Review, are all close to one another in favoring decriminalization. Yet their closeness on the issue of drug policy does not accurately reflect the significant ideological gap

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2. Masterrap hardly originated crass amoral materialism; it is deeply rooted in strains of American culture. Indeed there is a powerful archetype in American culture, one whose greed for power, money and individual aggrandizement or respect becomes ends that justify repulsive antisocial behavior. One could argue that this is just *What Makes Sammy Run* and what ordains both the infamous "J.R. Ewing" from the television show *Dallas* and "Gordon Gekko" from the movie *Wall Street* to succeed. See, e.g., B. SCHULBERG, *WHAT MAKES SAMMY RUN* (1941). In real life, Ivan Boesky, Michael Milken and Leona Helmsley, sharing Masterrap's distorted American dream, became tabloid criminals—the worst of the Reagan/Bush era's selfish individualism.

3. The author's metaphor of a horseshoe continuum represents less of a literal representation of measured differences in positions than a figurative mnemonic device.
which separates Friedman and Buckley from Schmoke.

Friedman's and Buckley's ideal America is one with little government and a lot of free markets so that those with goods and services, and property, can trade efficiently. Schmoke's ideal America, at least for the here and now, would include a community where those that have share, typically through governmental intermediation, with those that do not. For Schmoke, any decriminalization dividend\(^4\) should be invested in people by government funding of programs which treat, rehabilitate and create opportunities for those in need. Consequently, although Friedman, Buckley and Schmoke are not far apart on the isolated question of drug decriminalization, they are, nevertheless, separated by a significant ideological gap. Their relationship is like the end points of a horseshoe.

For those on the curved portion of the horseshoe continuum, the common drug prohibitionist thread is generally based on fundamental beliefs that substance abuse is wrong and must be fought to protect the moral fiber of the country and the sanctity of human life. Yet this common moral thread does not reveal other fundamental differences among those in favor of drug prohibition with respect to what interventionist role, if any, government should have in subsidizing, directing and reconstituting people’s lives. Those who share a strong commitment to maintaining the present criminal law prohibitions in fighting the “war on drugs”, like Drug Czar William J. Bennett,\(^5\) John Lawn the former Director of the Drug Enforcement Administration, Harlem's Congressman Charles Rangel, and authors in this Symposium, Marc A.R. Kleiman, Aaron Saiger, Gregory Loken and Michael Kennedy, often disagree sharply as to government’s role in providing compensatory or remedial “weapons” in the social war on drugs including education, treatment, and rehabilitation as well as more generalized prophylactic intervention to deal with the effects of racism and poverty.

This Foreword first organizes and compares the positions of the

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4. A “decriminalization dividend” is this author’s term for those societal resources which are or would be dedicated to fighting the “war on drugs” but which would be freed for other uses as a result of drug decriminalization. The costs of drug eradication, interdiction, customs, law enforcement, criminal justice and incarceration would be typical.

5. Bennett's official title is “Director, Office of National Drug Control Policy.” The term “Drug Czar” is the colloquial term for Bennett’s position. It is, however, one to which he subscribes. See, e.g., Address by William J. Bennett, Drug Policy and the Intellectuals, Kennedy School of Government, Harvard University, at 6 (Dec. 11, 1989) (on file at the Hofstra Law Review). That Bennett and others use the term Czar with all the horrific baggage it carries is either ignorant and insensitive or, if intentional, shocking.
authors in this Symposium and others within a conceptual framework built around the horseshoe continuum. This framework, composed of Anti-Drug Sticks and Anti-Drug Abuse Carrots, revolves around the two central components of drug policy disagreements: (1) the efficacy of criminal law as a deterrent to the use and sale of illegal drugs and (2) the efficacy of positive inducements aimed at minimizing drug abuse and reducing the size of the illegal drug business.

The Foreword then offers a critique of the present processes of formulating drug policy. Virtually all of the approaches to formulating drug policy have totally or largely failed to rely on democratically inspired consensus-gathering processes that include all of the many voices of the people involved, including that of Masterrap and his community. These unincluded voices present not only a problem in the democratic theory of drug policy formulation, but a real practical question as well: can any drug policy be effective without taking into account all of the voices actually in the chorus?

This Foreword concludes with the position that excluding these voices is both unsound democratic theory, and a practical fatal process flaw. The voices of Masterrap, his family and his community, although presently ignored, are hardly silent. For example, Masterrap has already demonstrated his power to create the extant social cacophony. If these critical constituencies continue to be ignored,

6. This is so because not reaching out to include Masterrap, his family, and his community exacerbates the inherent tendency of liberal democracy to alienate and isolate people in society. See, e.g., B. Barber, Strong Democracy 220 (1984). The voices of all who are affected by and respond to drug policy should be included in policy formation as directly as possible. For example, whether potential voices are too young to vote or not eligible by reason of citizenship, all constituencies must be invited to democracy's table for conversation in order to create sound drug policies which would be accepted by those most affected. Possible methods of achieving this might build upon contemporary theories of democracy which seek to increase direct involvement in self-governance and avoid the pitfalls of too much reliance on either selfish individualism or the good of a unitary community as illustrated by Apartheid, Nazism or Communism. Perhaps notions of neighbor should supplement formalities like citizenship as the key to fashioning a more satisfactory relationship among individuals and with government. Id. at 223 & passim.

7. Listening to Masterrap is analogous to listening to the participants in white collar criminal enterprises, such as Michael Milken with respect to junk bonds and insider trading, or perhaps Charles Keating or Neil Bush with respect to the savings and loan scandal. Whether criminal or not, it makes sense to listen to the participants not just the victims and outside experts when reformulating drug policies.

For those offended by the notion of listening to the young voice of an admitted drug dealer, instead, try listening to the voices of the youngsters who will become the Masterraps of tomorrow and to the voices of his family and his community. Wherever Masterrap appears, substitute his grandmother or fifteen year old brother and ask whether either is or will be
the inevitable result is likely to be more frustrated drug policies that attempt to impose solutions instead of arriving at shared goals and approaches to achieving those goals.8

I. THE SCHEME OF THE DEBATE: STICKS AND CARROTS

Given the myriad positions on drug decriminalization, a framework for facilitating comparison may be helpful. Construction of this organizational framework begins by placing the horseshoe shaped continuum in a coordinate plane. Two variables, referred to as "Anti-Drug Abuse Carrots" (Carrots) and "Anti-Drug Sticks" (Sticks), vary along the horizontal and vertical axes, respectively. Assignment of two absolute values (low or high with no gradations) for each variable results in a total of four possible distinct combinations: low carrot/low stick, low carrot/high stick, high carrot/high stick, and high carrot/low stick. The plane is accordingly divided into four areas or quadrants, one for each two-variable combination, with the lower left-hand quadrant (low carrot/low stick) labeled Quadrant I and the others (proceeding clockwise) labeled Quadrants II, III, and IV. The horseshoe continuum is roughly distributed over all four quadrants so that the graphic formed is as pictured below.

8. This is clearest with respect to the approach currently in political ascendancy, the Bush/Bennett/Lawn approach. That approach proposes a form of civil tyranny, a police state under a "Drug Czar", as the method for imposing the nation's drug policy. Although at times segments of the community are asked to participate in effectuating drug enforcement policies formulated elsewhere by those claiming professional expertise, even non-criminal elements of psychologically or legally disenfranchised communities are almost never asked to participate in formulating the drug policy in the first place.
A. Sticks & Carrots: Describing the Axes of This Debate

How the axes define the contours of this Symposium and facilitate the comparison of various positions in this policy debate are as follows:

1. The Bitter Sticks.— The government’s arsenal of Sticks attempts to create rational bases for not engaging in the illegal sale or use of drugs. Deterrence is the core supposition of the Sticks axis. In theory, the higher the risk of penalty, the greater the deterrent effect of the Stick on prospective behavior. The Stick value indicates the cost that government imposes on the individual for engaging in illegal drug sale or use and increases from minimal levels in Quadrants I and IV to greater threats of punishment in Quadrants II and III. The primary Sticks with which government attempts to deter illegal use and sale of drugs are criminal penalties. Chief among these is imprisonment. Imprisonment, the major theoretical deter-


11. Typical of this Quadrant would be Mayor Schmoke, Senator Galiber and Dr. Steven Jonas. See, e.g., Schmoke, An Argument in Favor of Decriminalization, 18 Hofstra L. Rev. 501 (1990); Galiber, A Bill to Make All Illegal Drugs As Legal As Alcohol, 18 Hofstra L. Rev. 831 (1990); Jonas, Solving The Drug Problem: A Public Health Approach to the Reduction of the Use and Abuse of Both Legal and Illegal Recreational Drugs, 18 Hofstra L. Rev. 751 (1990).


14. Other Sticks, civil in nature, are possible, and also run along this axis. These would include civil forfeitures, such as property used in or the proceeds from a drug enterprise, see 21 U.S.C. § 881 (1988), revocation of drivers and professional licenses, see Walsh, License Revocations Urged in Drug War, Wash. Post, May 9, 1990, at D1, col. 5, and deprivations of fundamental civil rights, such as the right to vote. See, e.g., Richardson v. Ramirez, 418 U.S. 24, 54 (1974) (upholding state disenfranchisement of a convicted felon against an equal protection challenge). This Foreword treats criminal sanctions as the primary Sticks.

15. The traditional goals of criminal penalties have been deterrence, retribution, rehabilitation and (on some lists) removal of the offender from society. See W. LAFAVE & A. SCOTT,
rent, is based on the assumption that individual liberty is universally valued and that deprivation of that liberty is punishment. If a would-be criminal values liberty, knows that the behavior about to be engaged in is criminal, and knows the likelihood of being caught and imprisoned, then, depending on that likelihood, engaging in the criminal behavior may not be worth the possible liberty cost.

In contemporary America, however, the goals of punishment have been, for the most part, reduced to deterrence. See, e.g., The Significance of Victim Harm: Booth v. Maryland and the Philosophy of Punishment in the Supreme Court, 55 U. CHI. L. REV. 1303 (1988). Retribution has receded into relative desuetude although some victims' rights movements, particularly at the sentencing stage of a criminal proceeding, can be understood as a revival of the retributive impulse. Id. at 1303 nn. 1-4. Rehabilitation also has largely been abandoned as a contemporary goal of the criminal sanction, see W. LAFAVE & A. SCOTT, supra, § 1.5(b), at 39-40, although it is still reflected in some prison education programs. Further, most forms of corporal punishment have become offensive to contemporary American standards of human decency. See, e.g., Jackson v. Bishop, 404 F.2d 571 (8th Cir. 1960) (holding that the use of a strap for punishment violated the eighth amendment's prohibition on cruel and unusual punishment).

Removing offenders from society for a period of time, starting as early as arrest and potentially running for the prisoner's life, also has vitality. See W. LAFAVE & A. SCOTT, supra, § 1.5(a)(2), at 32. This is especially true in the area of drug policy. For example, the Bail Reform Act of 1984 allows courts to detain, prior to trial, arrested suspects charged with certain serious felonies, including serious drug offenders, if the government can show by clear and convincing evidence that no conditions for release "will reasonably assure . . . the safety of any other person and the community." 18 U.S.C. § 3142(e) (1988). See United States v. Salerno, 481 U.S. 739 (1987). In addition, other anti-drug statutes aimed in part at removing offenders from society include possible life sentences without parole, 21 U.S.C. § 848(a) & (b) (1988), and the death penalty under certain circumstances, Id. § 848(a)(1).

While this assumption is generally sound, it is not always so. For example, some homeless people might be willing to risk their liberty for shelter in a society which leaves the homeless out in the cold. See, e.g., King, Man Trespasses to Stay Alive: Is He Justified, N.Y. Times, Mar. 6, 1990, at B1, col. 1.

17. Deterrence theory in the area of drug policy can not be expected to work in quite this fashion. To the extent drug users or sellers are not rational decision makers, imposition of criminal sanctions may not be justified by ordinary deterrence theories. This is essentially Mayor Schmoke's point with respect to attempting to criminally deter the physically addicted. Schmoke, supra note 11, at 510-11. As for nonuser-sellers, other doubts can be raised about the validity of general deterrence theories.

First, such sellers may not be able to accurately evaluate the costs which are likely to be imposed if they sell drugs. In general, people's ability to realistically assess risks may be subject to limitations based on the way the assessment question is framed, as well as their ability to accurately calculate probabilities. Cf. N. Silber, Observing Reasonable Consumers: Cognitive Psychology, Consumer Behavior and Consumer Law, 2 LOY. CONSUMER L. REP. 69 (1990) (reviewing observed cognitive attributes of consumers indicating possible fundamental and inherent imperfections in the way risks are calculated and choices made).

Moreover, often overlooked is an apparent special psychological limitation with respect to adolescent drug sellers, what this author calls the "invulnerability principle": the rules of the game of life (and death) do not apply to the egocentric adolescent. See e.g., Cvetkovich, Grote,
foregoing criminal activity because of the possible liberty costs, an individual decides that crime quite literally does not pay.\footnote{Bjorseth & Sarkissian, \textit{On the Psychology of Adolescents' Use of Contraceptives}, 11 J. Sex Research 256, 263-64 (1975) (noting the adolescents' belief in their own invulnerability and the difficulty adolescents have in thinking in terms of probability). In other words, reliance on adult deterrence theories may be inappropriate where adolescents are not mature risk-sensitive rational decision makers. Adolescents frequently do not accurately assess the risks of their behavior or respond to incremental increases in risk. For many adolescent decisionmakers, more information and higher risks may not lead to better decisions and more deterrence. See \textit{Id.} at 257, 260-61; Chandler, \textit{Egocentrism and Antisocial Behavior: The Assessment and Training of Social Perspective-Taking Skills}, 9 Developmental Psychology 326, 329 (1973) (building upon the theories of Piaget and others to empirically show a correlation between egocentrism and anti-social adolescent behavior); cf. Gruber & Chambers, \textit{Cognitive Development and Adolescent Contraception: Integrating Theory and Practice}, 22 Adolescence 661, 663-66 (1987) (building upon the theories of Piaget and Kohlberg to show the relationship between adolescent moral reasoning and risk taking).}

Finally, general deterrence theories may not be valid for the economically and socially forgotten, the "underclass". \textit{Cf.} W.J. Wilson, \textit{The Truly Disadvantaged} (1987). Deterrent theories are valid only within a range where the loss of liberty is viewed by the decision maker as a cost. For some drug sellers, however, the prospect of going to jail may not be an actual or psychological cost. For example, going to jail may provide for more economic and social stability than they would otherwise have. Jail may offer better prospects of three square meals and a bed. (While this may not be a conscious operative factor in decision making, it may be an unconscious one with a solid rational economic basis.) In addition, in some segments of the community, jail time is viewed as part of a man's right of passage and is referred to simply as "going away", a normal part of life. Increasing potential jail time under the above circumstances may not deter crime.

18. The cost of criminal behavior must be set high enough to effectively discourage the criminal behavior and to a degree acceptable by the electorate or at least the legislature. Effectiveness includes some increased ante on the projected penalty to reflect the likelihood, that is, risk, of getting caught and being punished. \textit{See} K. Dau-Schmidt, \textit{supra} note 9, at 3.

There are, however, limits on society's ability to use this approach. Under certain circumstances, where there is a very low probability of getting caught, society may erroneously believe it appropriate to increase the mandatory punishment to compensate for the very low probability of detecting and punishing the crime. But such a simple-minded extension of deterrence theories violates the rule of enantiodromia; converting an intended result into its opposite. \textit{Cf.} C. Jung, \textit{Modern Man in Search of A Soul} 204 (1933). At times, by increasing penalties, society may lose the ability to make meaningful marginal differentiations between potentially related crimes. For example, robbery is generally thought to be a less serious crime than murder and deserving of less severe penalties. Unfortunately, society's ability to catch robbers is substantially reduced if the victim does not already know the robber. So to deter this sort of robbery a simple minded application of the deterrence theory formula would have society increase the penalty for robbery between strangers to compensate for the lower probability of getting caught. But such an increase in the penalty for robbery may so reduce the difference between the penalties for robbery and murder, that the enhanced penalty for robbery between strangers actually encourages the robber to murder his victim at no risk of an additional penalty to himself and a lower risk of detection. \textit{See} Shavell, \textit{supra} note 9, at 1246 & n. 52.

This analysis clearly applies to the drug trade where the voluntary consensual nature of the business makes detection and prosecution in most cases unlikely. To compensate, society increases the penalty for drug dealing. As the mandatory penalties for drug dealing are ratcheted upwards they approach the penalties for murder. \textit{See} Shenon, \textit{Administration Offers a}
Yet the deterrent effect of the criminal sanction is not its only societal role. The criminal sanction also creates, molds, and defines societal values. In theory, the criminal law can create an antipathy to criminal behavior by potential actors. The social condemnation accompanying the criminal sanction can be educative in the sense that it may change endogenous values much in the way that statements like "Thou shalt not kill" might.19

For this process to take hold, the targeted decision maker(s) must accept the moral authority and legitimacy of the source of the criminal sanction. That is, the educative power of criminalizing certain behavior is effective as an educative device only if the criminal law is accepted as commands with moral persuasive force behind them and not merely an exercise of police power.20

The Sticks axis, therefore, represents the use of criminal sanctions to deter undesirable behavior and hopefully change internal values. As one traverses the horseshoe continuum up this axis from the lows in Quadrants I and IV to the highs in Quadrants II and III, there are correspondent increases in the willingness to use governmental power to control people's behavior and train individuals to dislike criminal behavior. Thus, in theory, Sticks can both deter criminal behavior and teach people to have an endogenous distaste

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19. The statement "Thou shalt not kill" can be used as a normative moral instructor and to that extent it reshapes people's internal preferences and values.

Dau-Schmidt has offered a model based on law and economics useful in understanding the relationship between the Stick of criminal law enforcement as both a deterrent and an educative tool to change preferences. In his article, Professor Dau-Schmidt distinguishes between the criminal law, on the one hand, as a deterrent or constraint on individual decision making assuming individual preferences to be fixed, and, on the other hand, as an internal value modifier. The criminal law can educate by reshaping an individual's underlying preference matrix through negative moral education and social condemnation. See K. Dau-Schmidt, supra note 9, at 15-17.

20. Id. at 18.
for criminal behavior through social stigmatization and condemnation.

2. The Sweet Carrots.— The second axis represents the Carrots. Carrots are, in a sense, the opposite of Anti-Drug Sticks; they provide incentives for desirable behavior, as opposed to disincentives for undesirable behavior. Carrots, including governmental inducements and positive reinforcements, usually take the form of subsidies of various sorts. These subsidies may come in the form of food, shelter, health benefits, and psychological counseling, for instance.21 Education,22 the most important Carrot, however, is different. Whereas the other Carrots result in a limited remedial effect in the here-and-now, education acts as a bright promise for the future, a promise of self-improvement and self-realization.23 Such a promise (if believed by the target) can be an extremely powerful incentive to modify behavior. Carrot values, governmental interventions with inducements not to use or abuse drugs, increases from minimal in Quadrants I24 and II,25 to more affirmative social intervention in Quadrants III26 and IV.27

Educative Carrots can powerfully change what an individual wants or values in life. Value education is the primary tool of such intervention. Those advocating the use of the education Carrot, and the promise it offers as the door to opportunity, self-actualization, empowerment, and an enhanced appreciation of life, believe government should intervene directly in educative value development. Policy options which encourage and shape internal preferences thus affect undesirable behavior by bringing “deviant” individual preferences into line with socially valued choices. In this sense, treatment and rehabilitation are both part of the Carrot. For those who have a substance abuse problem, treatment is the first phase of reha-

21. See, e.g., Martin, Big Bribe Helps Mothers Fend Off Allure of Crack, N.Y. Times, Mar. 7, 1990, at B1, col. 1 (reporting on a treatment program for crack addicted mothers with a “bribe of getting to be with children while in treatment and having a strikingly better chance of keeping them afterward.”).

22. In this Foreword, the word “education” sometimes refers not only to the factual or informational component of education, but also to the moral or value-development component as well. Education in this broader sense is transformative—it results in a heightened social consciousness of the educated individuals.

23. Of course, education is much more than this today, when wealth and power are so closely tied to knowing and controlling information.


25. See supra note 12.


27. See supra note 11.
bilitation; the second phase includes value education and the provision of personally and socially beneficial options for a productive future. Education for those who do not already have such a problem must be more than mere information. Education as a Carrot has to do with changing internal values and morality so that self-destruction or the destruction of others through drugs is registered as wrong and inconsistent with future opportunities for a productive life for self, children and one's community at large. People who believe in education as the gateway to their own better future (or at least that of their children) are like the proverbial donkey with the carrot just out in front; they do not get distracted by the promise of criminal enterprise. This potential function of education serves in the positive dimension the same function that the criminal sanction can in a negative sense, changing the internal values and preferences of individual actors.

Reference to Sticks and Carrots, the bitters and sweets of drug policy, will facilitate comparison of the various positions of the authors in this Symposium and others, in this policy debate. The Quadrants of the comparative framework of the biaxial chart can be described in general terms as follows:

Quadrant I: Eliminate the criminal law enforcement component while maintaining or reducing public resources allocated to education, treatment and rehabilitation.

Quadrant II: Increase the resources devoted to the criminal law enforcement component, while maintaining some minimal public resource allocation to education, and even less to treatment and rehabilitation.

Quadrant III: Maintain a strong criminal law enforcement component while substantially increasing the public investment in people by supplementing resources to education, treatment and rehabilitation.

Quadrant IV: Eliminate the criminal law enforcement component, and instead invest the resulting decriminalization dividend in people by reallocating and supplementing government aid to education, treatment and rehabilitation.

The somewhat more detailed description of the four Quadrants of drug policy which follows will place the articles in this Symposium
in comparative perspective.  

II. QUADRANT I

Eliminate the criminal law enforcement component while maintaining or reducing public resources allocated to education, treatment and rehabilitation.

Quadrant I represents the minimalists' position in the drug policy debate, where less government tends to be equated with more liberty. Viewed through the opera glasses of those occupying this Quadrant, life is played on a field where individual actors make good and bad decisions in the game of life and are rewarded accordingly. Adults are viewed as responsible for themselves and their decisions and should be left alone to decide whether to engage in, or refrain from, activities, including drug consumption, which may be harmful to themselves. Indeed, attempts by the government to interfere with the drug marketplace, where willing adult buyers and sellers come together, is viewed as likely to undermine human liberty and individual freedom across a broad spectrum.

The occupants of Quadrant I generally set the stage for their argument that drugs should be legalized or decriminalized by leveling the drug playing field between legal drugs such as alcohol and tobacco and illegal drugs such as marijuana, cocaine and heroin. To date, much of the difference between "good", or at least tolerated drugs, and "bad" drugs is based more on the arbitrary political fashion of the legislated will rather than on pharmacological differences. If the playing field is leveled, drugs in one form or another

28. Most of the participants in this, the most recent national drug policy debate, give at least lip service to some Sticks and Carrots in their proposals. Nevertheless, the assignment to Quadrants is in accord with the thrust of the particular author's proposal and one infers the allocation of public dollars these authors would support.

29. Throughout this Foreword most traditional ideological labelling such as "libertarian" has been avoided in favor of the more descriptively neutral horseshoe and Quadrant approach.


32. This point is forcefully made in this Symposium by several authors. See, e.g., Jonas, supra note 11, at 753-54; Kleiman & Saiger, supra note 13, at 539-40 (discussing Thomas Szasz's view that the reason some drugs are tolerated and others are not has more to do with which drugs are preferred and used by politically dominant groups than with the comparative pharmacological dangers of psychoactive drugs); see also N. SILBER, TEST AND PROTEST: THE INFLUENCE OF CONSUMERS UNION 39-74 (1983) (citing tobacco as a case study in temperance movements and tracing the cultural history of tobacco as a drug in this country).
have been taken by people throughout recorded human history and "[a]lmost everybody takes some kind of stimulating drug." More-over, all drugs are demanded because they provide some sort of benefit to their user. Even the horrible drug "crack" provides some benefit to those taking it: cheap momentary relief from the despair of often desolate lives. In the tradition of Quadrant I, decisions whether to criminally regulate drugs should be based on the societal benefits and costs of such regulation and not on an enforced arbitrary morality.

James Ostrowski's work comes to this Symposium from the Cato Institute and out of the tradition of Quadrant I. In his comprehensive, statistically-based article, The Moral and Practical Case for Drug Legalization, Ostrowski offers an excellent illustration of how the drug policy debate is approached by Quadrant I adherents.

Right from his opening discussion of methodology ("the rules of the game") through to his revealing statistics on the harm caused by currently legal drugs versus the unfortunate but rather modest harm caused by currently illegal drugs, Ostrowski makes it clear that his approach is to view all of the facts related to substance abuse, not to stack the deck by ignoring the harm caused by alcohol and tobacco.

Ostrowski challenges reliance on drug prohibition as an ineffective costly policy. Crime in the illegal marketplace, wasted resources,
corruption of government officials, and wide-scale health problems are some of the costs incurred by the current prohibitionist regime. Ostrowski argues that the choice to use or not to use drugs is each individual's right—and any infringement of that right is unacceptable and creates unnecessary costs.

One of Ostrowski's points, as well as other occupants of Quadrants I and IV, is the extent to which the profitability of the drug business is created by prohibition. Paradoxically, the greater the effort to eradicate illegal drugs the more profitable their sale. According to Ostrowski, when the issues of drug policy are considered from a level playing field, the issues are ones of individual liberty in a marketplace of adult decisionmakers versus the counter-productive ineffectiveness and inefficiency of governmental drug prohibitionist intervention.

In Notes from the Front: A Dissident Law-Enforcement Perspective on Drug Prohibition, John Schuler and Arthur McBride take a different route to their similar Quadrant I conclusions. These authors point out that the present allocation of resources used to enforce prohibition cannot stop user demand. Moreover, the "social costs of enforcing drug prohibition" are continuing to mount—from the lives of law enforcement warriors and innocent bystanders that are sacrificed, to the increasing diminution of long cherished constitutional rights—all in the name of the "war on drugs." To Schuler and McBride, the criminal justice system presently functions as a social Darwinian selection process, weeding out the weaker dealers and creating a fitter, better skilled and more dangerous underground illegal drug trader. They argue that "[w]hat drug traffickers sell is not a product; they sell the service of illegal delivery—Prohibition creates a lucrative market for their service." Notes from the Front concludes that a no-nonsense policy consisting of low Stick and low Carrot expenditures is the best solution. From the vantage point of these authors, the costs of prohibition are enormous when compared to its benefits.

37. Typical of such government ineptitude and interminable fingerpointing is the current deplorable situation in Washington, D.C. See Shenon, Bush Officials Say War on Drugs in the Nation's Capitol is a Failure, N.Y. Times, Apr. 5, 1990, at A1, col 3.
39. These authors are however concerned about short term increases in drug "experimentation" and therefore propose that any decriminalization be phased in starting with the "least dangerous" drugs first. Schuler & McBride, supra note 35, at 938.
Quadrant I is in part characterized by its willingness to tolerate self-destructive individual behavior as the flip-side of the coin of individual efforts to self-improvement. The Quadrant I view is that you cannot have one without the other; governmental control will interfere with desirable liberty. The source of good and bad individual decisions should not be government but the individual player upon the field of life.

III. Quadrant II

Increase the resources devoted to the criminal law enforcement component while maintaining some minimal public resource allocation to education, and even less to treatment and rehabilitation.

The views of adherents of drug policies within this Quadrant are currently in the ascendency. This Quadrant encompasses the range of options associated with a vigorous law enforcement component, while at the same time not "coddling" those with a penchant or disposition for crime. This is the "get tough on crime" political wave on which Richard Nixon rode into power twenty-one years ago, and on which Bush/Quayle/Bennett still rely. These politicians have successfully preached to a frightened and angry segment of American voters that society does not get anywhere kowtowing to criminals. Rather, the government must use the Anti-Drug Sticks to subdue large classes of people into obedience. Many in this Quadrant believe it is the role of government to impose sound moral drug policy onto those who will not accede to the legislated moral will of the voting majority. In this Symposium, this position is represented eloquently by John Lawn, former Director of the Drug Enforcement Administration. In his article, The Issue of Legalizing Illicit Drugs, Lawn uses historical, domestic and international treaty arguments to support the continuance of Quadrant II deterrence-based drug pol-

also express a similar concern, but come out in favor of maintaining a criminal law enforcement component. See Kleiman & Saiger, supra note 13, at 558-59.

40. Indeed, a cornerstone of Nixon's political era was getting tough on drug dealers. See, e.g., Special Message to The Congress on Control of Narcotics and Dangerous Drugs, July 14, 1969 in Public Papers of the Presidents: Richard Nixon, 1973, at 513 (1974) [hereinafter Public Papers] (urging that because "abuse of drugs has grown . . . into a serious national threat. . . . a new urgency and concerted national policy are needed. . . ."); Message to the Congress Transmitting Reorganization Plan 2 of 1973 Establishing the Drug Enforcement Administration, Mar. 28, 1973 in Public Papers, supra, at 228 (calling for "all-out, global war on the drug menace.").

41. W. Bennett, supra note 5, at 8, 11.

42. See, e.g., W. Bennett, id. at 9.
icy. He argues that legalization would send the wrong message to the youth of America and to the world at large. Lawn points to the failed British experience treating heroin addiction as a medical problem in the 1970s as a warning.

According to Lawn, legalization of drugs would violate international treaties to which the United States is a signatory. Lawn further opines that legalization would make drugs more widely available to the youth. This, he argues, is undesirable because drugs create addiction, violent crime, child abuse and loss of productivity. According to Lawn, society must keep drugs away from people for their own good because legalization would replace the current black market with a “black plague of addiction, overdose and crime.”

IV. Quadrant III

Maintain a strong criminal law enforcement component while substantially increasing the public investment in people by supplementing resources to education, treatment and rehabilitation.

Quadrant III is characterized by its reliance on government intervention in both the Carrot and Stick dimensions. In this Quadrant, government, simultaneously stern and gentle, is the omniscient, omnipresent and omnipotent instrument to prevent, cure and, if necessary, punish drug sale and abuse. The government acts to deter and punish those who violate the majority will and it nurtures positive activity through inducements and support. The government is all things to people: the righteous guaranteed provider of good and the just arm with which to punish evil. Like those in Quadrant II, the occupants of Quadrant III believe that allowing substance abuse is morally wrong. The waste of human life due to drug abuse is not a liberty option as it is for those in Quadrant I. The argument that decriminalization would make more drugs available and might lead to more drug addiction and substance abuse carries great weight in this Quadrant.

The occupants of Quadrant III, however, not only reject the decriminalization policies advocated by those in Quadrants I and IV, but they are also some of the strongest critics of Quadrant II’s al-

43. Lawn, supra note 12, at 713.
44. See e.g., Rangel, Our National Drug Policy, 1 Stan. L. & Pol’Y Rev. 43, 52-54 (1989) (asserting that government has a moral and social responsibility to provide the best quality of life for its citizens and use law enforcement to punish those that do not obey society's anti-drug moral teachings).
most exclusive reliance on law enforcement. Most in this Quadrant believe that society, through government, has an affirmative obligation to intervene in the lives of substance abusers, as well as others not likely to fulfill their human potential due to, for example, poverty and racism. Significantly, in Quadrant III, education is relied upon to inculcate positive values within the community. Endogenous preferences, therefore, are not viewed as immutable, but rather to be molded by society.

In *Legal Cocaine and Kids, the Very Bitterness of Shame*, Loken and Kennedy describe the extent of cocaine use by adolescents as an epidemic. The effects of cocaine include its addictive properties, its toxicity, psychological consequences, effects on newborns, and its effect upon crime. The article discusses theories explaining adolescent drug abuse and focuses on the importance of easy availability in increasing its use. If it were not for a lack of money, the authors suggest, like the laboratory monkeys, human desire for cocaine would be insatiable.

Based on their experience with troubled youngsters passing through the Covenant House programs, Loken and Kennedy conclude that kids need to be protected from cocaine by the government through continued law enforcement along with increased funding for prevention and treatment. Because of cocaine’s ominous control over the individual, cocaine has, “no place in the lives of this country’s children and adolescents.” The assumption of Quadrant I and IV legalization advocates that age restrictions would in fact keep legalized drugs out of kids’ reach is rejected by those experienced in working with troubled youths. Increased use resulting from increased availability is seen as inevitable. Additionally, the often used justification for such a policy—reducing drug related violence and saving money—are thought to be weak reasons for legalization in light of the likely costs to children. Children must be the focus of the fight against drugs and their best interests should be the engine which drives all drug policy.

In *Drug Legalization: The Importance of Asking the Right Questions*, Kleiman and Saiger criticize the legalization of drugs because the probable human costs would outweigh the potential benefits. Kleiman and Saiger credit various arguments in favor of legali-
zation, including the interesting and insightful analogy to the historic witch hunts of late medieval Europe, but ultimately maintain their position in favor of continued prohibition. Quadrants I and IV advocates of drug legalization are criticized for their programmatic vagueness, overreliance on the case for legalizing marijuana, and failure to fully acknowledge the consequences of the likely increased consumption of drugs after any decriminalization. Kleiman and Saiger hypothesize a legalization scenario and conclude that the risk of greater drug use would be a serious, costly and probably irreversible experiment with human lives.

Finally, in The Uneasy Decriminalization: A Perspective On Dutch Drug Policy, Van Vliet discusses the Dutch program of selective anti-drug law enforcement and the attendant social programs, all calibrated to the harmfulness of particular drugs to individuals and society. The Dutch program is predicated on a political and social consensus to tolerate some drug use as inevitable and focus efforts on controlling drug use by shifting preferences of the population, particularly young experimenters, away from hard drugs like heroin and cocaine, and towards “soft” drugs like marijuana and hashish. To accomplish this, the government’s focus has been on education rather than criminal law enforcement. This Dutch policy of integrating drugs carefully into society using a split-market approach, coupled with strict enforcement and educational programs directed to different market segments, is presented as relatively successful.

The Dutch program uses a mix of selective Sticks and Carrots, and includes an effective degree of decriminalization with respect to “soft” drugs like marijuana. This program is, therefore, a good transition point on the horseshoe continuum to move down from Quadrant III to Quadrant IV.

V. Quadrant IV

Eliminate the criminal law enforcement component, and instead invest the resulting decriminalization dividend in people by reallocating and supplementing government aid to education, treatment and rehabilitation.

47. The extent to which the program is not successful is attributed to the influx of hardcore drug addicts and other criminals, many of which are, according to Van Vliet, German nationals displaced by their own country’s harsh anti-drug policies. Van Vliet, The Uneasy Decriminalization: A Perspective on Dutch Drug Policy, 18 Hofstra L. Rev. 717, 741-43 (1990).
Periodically, the reigning paradigm of scientific or social thought is irrevocably and profoundly affected by some one or group questioning the theretofore unquestioned: the precepts under which a community reflexively and rather unreflectively organizes its approaches to common problems. Kurt Schmoke, the bright young Mayor of Baltimore and former federal prosecutor, has certainly caused such a fundamental reexamination of drug policy and its relationship to law. Mayor Schmoke did this by using his highly visible election victory to challenge the still reigning Nixon-era law and order drug war paradigm, raising the issue of drug decriminalization to a higher level of national, and perhaps international consciousness.

Mayor Schmoke's decriminalization proposal, which includes increased emphasis on education, support and prevention of drug abuse, is illustrative of Quadrant IV on the Carrot/Stick horseshoe continuum. Essentially, Schmoke argues that the illegal drug abuse problem should be reconceptualized as a public health problem rather than as a law enforcement problem. For Schmoke, most of the criminal problems associated with drugs are driven not by the drugs themselves but by the economic and social exigencies of a profitable illegal drug trade.

Schmoke argues that drug addicts cannot be deterred by criminal sanctions since they suffer from an overpowering chemical addic-


49. A Federal District Judge, Robert Sweet, has also advocated decriminalization. The War on Drugs Is Bankrupt, Legal Times, Dec. 18-25, 1989, at 20. In addition, Reagan Administration Secretary of State George Schultz has also expressed his belief that decriminalization ought to be national policy. See MacNeil/Lehrer Newshour, (WNET television broadcast, Jan. 8, 1990) (transcript on file at Hofstra Law Review).

50. This is not to suggest that Schmoke was or claimed to be the first to suggest decriminalization. See, e.g., Schmoke, supra note 11, at 507-10 (summarizing some of the earlier historical debates); Ostrowski, supra note 10, at 351-70 (summarizing some of early English and American drug policy and debate). Indeed, during Schmoke's formative college and law school years a very similar drug decriminalization debate occurred, albeit, at that time prompted by the perceived increase in the sale and use of marijuana and heroin. See, e.g., Flashback, Wall St. J., Sept. 7, 1989, at 14, col. 4 (excerpting a 1972 column in the Wall Street Journal by Friedman urging decriminalization); see also R. BONNIE, MARIJUANA USE AND CRIMINAL SANCTIONS 19-39 (1980); W. ELDRIDGE, NARCOTICS AND THE LAW 116 & passim (2d ed. 1967); R. KING, THE DRUG HANG-UP (1972).

51. In a sense, the paradigm Schmoke debunked was the notion that poor drug addicts were criminals while middle class people with drug dependencies were sick.
tion, not a lack of willpower. Criminal punishment is seen as ineffec-
tual since it erroneously assumes that the addict is a rational
decisionmaker capable of being deterred from taking drugs by the
threat of criminal punishment.

Moreover, Schmoke argues, criminalization and the war on
drugs have exacerbated existing problems while creating new ones.
The incidence of adulterated drugs has been made worse by drug
prohibition while the spread of AIDS among drug users has reached
crises proportions. Schmoke also points to the mixed message of for-
bidding some drugs while socially accepting and advertising two of
the most dangerous and widely abused legal drugs: tobacco and
alcohol.

Further, Schmoke points out that drug prohibition creates other
social problems: (1) illegal drug profits, (2) incentives, luring people
(especially poor young people with no other route to money and
power) into the unhealthy and often deadly drug underworld; (3)
v violent and lethal treatment of drug users, dealers, and innocent by-
standers; (4) erosion of some of the fundamental fourth and eighth
amendment constitutional civil liberties and (5) diverting money
from important social programs, including many that would help
ameliorate the conditions of powerlessness and poverty that give rise
to much of the demand for drugs.

Schmoke's solution to this quagmire is drug decriminalization.
He suggests that resources expended fighting the war on drugs be
reallocated to drug related public health care and anti-drug abuse
education and information. He also wants to implement grass roots
community organizations that will provide employment opportunities
and coordinate efforts with government to educate and empower ad-
dicts, users and poor people. Schmoke envisions methadone, heroin
and cocaine maintenance programs that are widely and freely availa-
ble; and marijuana would be completely legalized. Like those in
Quadrant I, Schmoke hypothesizes that such a new drug policy
would so diminish the existence of underground drug markets that
the violence, disease and death they create will be substantially re-
duced if not eradicated. However, unlike many in Quadrant I,

52. For example, the illegal drug trade is in part responsible for the absurd yet now
commonplace notion of "stray" bullets as features of urban life. McKinley, Where Fear of
Place at the Wrong Time: Stray Bullets Kill More Bystanders, N.Y. Times, Jan. 14, 1990, at
1 col. 1.

53. This author's phrase for this is "decriminalization dividend." See supra note 4.
Schmoke argues that resources used to fight crime should be reallocated to health, education, employment and empowerment programs.

Considering the history of alcohol legalization (post-prohibition) as a lesson in how not to proceed with a decriminalization plan, Schmoke advocates a complete prohibition of all drug advertising, including tobacco and alcohol. The problems of alcohol abuse following the end of prohibition, Schmoke believes, could have been ameliorated with better and more prudent planning and education with respect to the dangers of alcohol abuse. Through such proposals, Schmoke at least partially answers the concerns of Quadrant III people like Kleiman.  

New York State Senator Joseph L. Galiber, representing the Bronx, has moved even further down the Stick axis than Mayor Schmoke; Galiber advocates complete legalization. His proposed New York Senate bill would put all drugs on the same footing as alcohol. Drugs would be regulated, distributed, and taxed by government through a Controlled Substance Authority. In typical Quadrant IV fashion, Galiber suggests that such tax revenue be spent on research, education, and rehabilitation to minimize the effects of drug abuse.

Under Galiber's bill, the role of the criminal justice system would be reduced largely to regulation and preventing assaultive, non-consensual and predatory crimes. The criminal justice system would have no place in the prevention of consensual and voluntary adult behaviors involving the use of drugs.

Finally, global concerns lead Marie-Andree Bertrand to advocate legalization while encouraging expenditures of resources on education, information and health programs to ameliorate and lessen the harms of drug abuse. In her article, Bertrand argues that prohibition gives rise to crime, erodes civil liberties and creates a powerful underground with many international connections. Prohibition is seen as a global problem that affects most localities by putting money in the hands of antisocial forces. Money which is used to finance the purchase of arms by some government and antigovernment forces, like Noriega in Panama and the Contras of Nicaragua.

54. Kleiman & Saiger, supra note 13, at 554-64 (suggesting that decriminalization would inevitably lead to at least short-term increased use and possibly irreversible costs in human lives).
55. Galiber, supra note 11.

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It also leads to a rise of international drug cartels that threaten the public and destabilize states the world over. Bertrand asks: do we want the state to control drugs or do we prefer organized crime to control them?

CRITIQUE: WHY NOT TALK WITH THE COMMUNITIES MOST AFFECTED?
[AND BRING OUR CHECKBOOKS TO THE CONVERSATION]

Virtually all of the drug policy proposals represented in this Symposium and elsewhere can be critiqued for not adequately including the various voices and perspectives of Masterrap, his family and much of his community in the national drug policy debate.\(^57\) Masterrap, his family and his community are not only entitled to be heard as a matter of sound democratic theory;\(^58\) listening to the voices of non-voters, including illegal aliens and people too young to vote (but old enough to sell drugs and commit felonies). Both in its scope and process, the current Constitution may not be up to the task; it has always been better at promising justice to the traditionally excluded than delivering it. Cf. Marshall, Commentary: Reflections on the Bicentennial of the United States Constitution, 101 Harv. L. Rev. 1, 5 (1987). The two hundred year old American Constitution was not conceptually designed to include the disenfranchised, whether literal or psychological. Those not included were supposed to defer to their "superiors". M. Tushnet, Red, White and Blue: A Critical Analysis of Constitutional Law 14 (1988). But what response America, when those left out do not defer?

The appeal in this Foreword is to a broader democratic theory, one that recognizes that all people are people and must be included within the mechanisms of democratic process. Current notions of a society composed of a politically participating citizen elite and a psychologically and sometimes legally disenfranchised underclass, are less than an ideal implementation of contemporary principles of basic equality. Cf. L. Tribe, American Constitutional Law § 1437 (2nd ed. 1988); Dworkin, Social Science and Constitutional Rights: The Consequence of Uncertainty, 6 J. Law & Educ. 3, 10-11 (1977). The plea in this critique for broader and qualitatively different participation is consistent with the formal trend of constitutional amendment over the last one and a quarter century. See J. Ely, Democracy and Distrust 99 (1980) (suggesting that the adoption of the fourteenth, fifteenth, seventeenth, nineteenth, twenty-third, twenty-fourth, and twenty-sixth amendments reflects a dominant theme of expanding commitment to a broader franchise). However, the broader more inclusive democratic theory contemplated in this Foreword is not entirely encompassed within the current Constitution's text, or implicit in its structure or latent theories of democratic process.

Of course, to the extent that the suggested dialogue is pursued not as a fundamental
ous voices of Masterrap, his family and his community makes good sense. If a national drug policy is to have a chance of success, at least without a drug inspired civil tyranny, then the larger society must start listening to the voices of those most directly affected by or likely to be involved in and with the illegal drug business: the Masterraps of today and tomorrow, their families and their communities whether voters or not. To take the most extreme voice in the proposed expanded democratic chorus, Masterrap himself, what could and would Masterrap say to the rest of us?

Would Masterrap just favor some Quadrant I solution: legalize his drug selling business? Or would Masterrap tell us that he would prefer some Quadrant II solution since a substantial law enforcement component keeps the profitability in his drug business high? Or would Masterrap prefer some Quadrant III solution: keep his profits high by maintaining the business risks created by criminal law enforcement, but ameliorate the consequences of his drug selling through the use of social programs? Or maybe Masterrap would say that Quadrant IV would be his preference because while his profits would be lower, some illegal drug business would probably remain even after decriminalization or legalization, and the alternative government programs would allow him to profit now and still have alternative opportunities later when he went "straight". Where would Masterrap come out? In which Quadrant I, II, III or IV? Who knows? And who cares?

entitlement but as a better way of formulating national drug policy, the grander constitutional bridges need not be crossed. For those not prepared to consider these larger questions at this time, this critique should be treated as an entreaty to do the right thing as a discretionary method of formulating sound drug policy which is not (necessarily) constitutionally mandated.

59. If Masterrap's voice can be harmonized, then perhaps the intractable drug problems of the 1980's may give way to a more productive channeling of Masterrap's potential in the 1990's.

60. The profitability of the drug business is substantially created by Anti-Drug Sticks. That is, paradoxically, criminal law enforcement itself makes the drug business profitable. This is evident from the mark-up in the costs of drugs as the law enforcement risk increases. Cook, supra note 36, at 110.

61. The assumption is that any decriminalization or legalization regime is going to at least exclude people below a certain age from legal access to drugs, and by so doing create some possibility for an illegal market. Certainly the example of alcohol supports this assumption. See Kleiman & Saiger, supra note 13, at 543-44.

62. It has been argued that when society criminalizes behavior, one of the messages entailed is that the values and preferences of anyone convicted of such behavior are not important in the social equation. K. Dau-Schmidt, supra note 9 at 40. This view, that drug offenders are not worthy of being counted as political persons, is reflected in the typical forfeiture of political rights, particularly voting, upon conviction of a crime in many jurisdictions. See, e.g., Richardson v. Ramirez, 418 U.S. 24 (1974) (upholding state disenfranchisement of a con-
The answer to the question “who cares” must be all of us. A common goal of all policies suggested in this Symposium is that Masterrap’s drug-related role in society either be eliminated or at least substantially controlled and reduced. But Masterrap is not without power. He can ensure that he is not ignored and that America as we know it is changed for the worst. It is Masterrap’s power that is making us fight this drug war in the first place. Thus we must all care: but who knows what would induce Masterrap to stop harming others by selling drugs and causing the drug war and its casualties?

Respectfully, none of the drug policy proposals to date provide an entirely satisfactory answer. The proposals in all four Quadrants are inadequate precisely because to one degree or another they impose solutions on the communities and people most affected by the drug problem. This is particularly evident in Quadrants II, III and IV where solutions to the drug problem are imposed on communities through governmental intervention in the form of anti-drug Carrots or Sticks and although less obvious in Quadrant I, it is also true there. Would it not make sense to listen to the various voices of Masterrap, his family and his community for possible ways to avoid the problem instead of fighting a costly and thus far futile war?

vicoted felon). See generally Note, The Disenfranchisement of Ex-Felons: Citizenship, Criminality, and “The Purity of the Ballot Box,” 102 Harv. L. Rev. 1300 (1989). Given the rate of arrest and conviction for minority males, this customary disenfranchisement is of great potential significance in politically silencing large segments of minority populations. For example, currently, one in four black men in their 20’s have been either in jail, in prison, on parole or on probation compared to one in 17 white men in their 20’s. Harris, Blacks Feel Brunt of Drug War, L.A. Times, Apr. 22, 1990, at A1, col. 1.

63. Masterrap has the power both to import and sell drugs and we are powerless to completely stop him. Even if one assumes that Anti-Drug Sticks can favorably impact upon drug consumption, as those authors in Quadrants II and III do, the price paid in economic terms and in terms of opportunity costs—the waste of societal energy and resources on this problem—are substantial. Moreover, the most devastating costs are hardest to measure; the costs of lives of innocent standby victims of drug-related violence, police officers, users, dealers, and the wasted lives of jailed youth. Finally, the civil liberties of the rest of us are being eroded by the war on drugs. See, e.g., Belkin, Airport Drug Efforts Snaring Innocents Who Fit “Profiles”, N.Y. Times, Mar. 20, 1990, at A1, col. 5.

64. Those in Quadrant I might argue that solutions in this Quadrant are predicated upon a theory of maximizing individual decision making. However, since the individual’s “station in life” is a given in Quadrant I, many individual decisions are preempted by life circumstances which exist prior to decision making. Stated differently, individuality and “free” decision making mean very different things for Vice President Dan Quayle and Masterrap given where they started life and the operative assumptions made throughout life about them because of who they were at birth.

65. What this author suggests may seem outrageous to some and even dangerous or immoral to others. This position of dialogic policy formation with the traditionally excluded is
Masterrap, his family and his community may provide some necessary and unique insights. What are their origins and the contours of their interpretations of the American dream and how they fit (or do not fit) within that dream? Masterrap, his family or his community might know what it would take to get Masterrap out of the illegal drug business. More important for those who do not believe in the possibility of, or care about, the redemption of Masterrap, Masterrap, his family or his community might have some unique insights into what social policies and methods of policy formation might reach future Masterraps. If society listens to these currently unlistened to voices, these people might invest in the process adopted for several reasons. First, as to Masterrap the author believes in the possible redemption of all children, including the lost sheep which repent after moral suasion. See Luke 15:1-7 (teaching parable of the lost sheep). Second, there are few racial, ethnic and economic differences between Masterrap and many of his contemporaries that do not sell or use drugs. Masterrap and other youth tempted by the allure of drug money are not inherently evil or different people; they are alot like the rest of us and our children. If the Masterraps of the world could believe that they lived in a society where they had a realistic chance of ever “making it” legitimately, this Foreword argues that the overwhelming majority would not sell drugs. Accord, Mayer, Street Dealers, Wall St. J., Sept. 8, 1989, at 1, Col. 1 (noting that the greater promise of economic opportunity in the drug business is siphoning off some of the brightest and most ambitious minority youth).

There are, however, deep seeded structural aspects of contemporary American society which stack the game of life against Masterrap and many in his community, making them feel extraordinary: “outsiders”, “others”, and “minorities”, even in their own land. Perhaps worst of all, from a psychological perspective, these structural features of contemporary America make it difficult to crystallize for oppositional purposes the problem of living as an outsider in one’s own land. See generally Crenshaw, Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law, 101 Harv. L. Rev. 1331, 1341-44, 1381-85 (1988). As Schmoke and Jonas point out in this Symposium, historically, the drugs that have been selected by society to be illegal has been largely influenced by religious, ethnic, race and class prejudices. Cf. Oregon v. Smith, 110 S.Ct. 1595, 1618, n.6 (1990) (Blackmun, J., dissenting) (suggesting that government’s grant of a religious exemption for use of alcohol during Prohibition, but not presently for Peyote was arbitrary).

In sum, I am extremely reluctant to condemn and accede to legitimizing the disenfranchisement and stigmatization of minorities on the basis of drug arrests given the highly suspect and disparate rate of arrests and prosecutions of blacks, but not whites, for drug offenses. See Harris, supra note 62 (citing both judges, police and others who have concluded that the war on drugs is in effect a war on blacks since 80% of drug use is by whites but the majority of the drug arrests are of blacks). Malcolm, Crack, Bane of Inner City, Is Now Gripping Suburbs, N.Y. Times, Oct. 1, 1989, at A1, col. 1 (noting that because middle class drug purchasing and use is more surreptitious it is less likely to be detected by law enforcement efforts focused on street level activity). See generally Developments in the Law: Race and the Criminal Process, 101 Harv. L. Rev. 1472, 1495 (1988) (noting and analyzing the relationship between racially disparate law enforcement and criminal process for Blacks, Native Americans and Hispanics). At the very least, we should invite Masterrap to the table to help us (a) calibrate any deterrence mechanism (Sticks) and benefits (Carrots) used in drug policy adopted after the conversation and (b) improve the chances that his little brothers, or our sons, will not follow in his footsteps.
and thereafter join society's efforts to minimize the adverse consequences of drug abuse. Finally, including the currently excluded in the process of solving the problems of their lives and the society of which we are all part allows us to improve our civilization by approaching promised, but never fully realized, democratic values this nation holds dear.

If a fictionalized Masterrap may be used to make a more general point about the drug problem and the underrepresentation of the real Masterrap and parts of his community in the current drug policy debate, assume that Masterrap was born in the United States to parents who were undocumented aliens. Thus fictionalized, Masterrap, a citizen, is de jure part of this nation, as indeed, his illegal deportable alien parents are de facto. Together they form one nucleus of what is now euphemistically called the "underclass"; outsiders in the promise land.

While this underclass of Masterrap, his parents and millions of others is really part of this country, is it included in the American dream or is it its worse nightmare? Does the nation's democratic processes, formal and actual, include Masterrap and the community...
nity to which he belongs? How should drug policy be formulated in light of the apparent and substantial involvement of this psychologically and, for some of its members, politically disenfranchised group? The answers, at least in part, to these questions depend on whether one views America from the top of society or the bottom.

A. The View from the Top

The views espoused in all four Quadrants in the drug policy debate outlined above to a greater or lesser extent impose solutions on Masterrap, his family and his community without receiving input from the human objects of the proposed social policies. This process defect is precisely the reason that the approaches from all four Quadrants are doomed to failure. By comparing the views of these Quadrants from the top of society with the views from Masterrap’s side, the bottom, the essential importance of participation by those now partially disenfranchised will be revealed.

Viewed from the top, those in Quadrant I argue essentially that what one gets in America is what one’s individual ability and effort enables him or her to achieve. The decision to use drugs is merely a preference, a choice made for which one suffers the presumably known consequences. Since drug businesses are substantially market transactions, those in Quadrant I advocate reducing the total social costs of these consensual transactions by eliminating the profitability of this market through legalization or decriminalization. The result would be that Masterrap would be left to run life’s race on his indi-

74. Most in minority communities are touched by, and involved with, albeit certainly not as users or sellers, some problem associated with substance abuse, legal and illegal, through family, friends or neighbors. Yet, presently, many of our voices are not directly or even virtually included in any meaningful way in the policy formation conversation. For example, those in minority communities who do not vote, are not politically active, or connected to some politically affiliated institution such as churches or schools, have no one in the system that represents their voices.

75. Perspective, whether one is born a Bush or a Bennett or a poor child of color named Yusuf Hawkins or Jose Lebron, does make a difference. Labash, Brooklyn Jury Indicts Officer in Boys Death, N.Y. Times, Mar. 31, 1990, §1, at 27, col. 2; Cf Matsuda, Looking to the Bottom: Critical Legal Studies and Reparations, 22 HARV. C.R.-C.L. L. REV. 323, 324 passim (1987) (suggesting that those who have experienced discrimination and felt the falsity of the liberal American promise speak in a special voice to which we should listen).

76. None of the people associated with Quadrant I would probably espouse such a naive version of this libertarian view. Nevertheless, this oversimplification does help make the point that at their core, libertarians believe that individuals substantially control their destiny. Moreover, most of those in Quadrant I do not espouse a view that individuals should compete in this world stripped of the privileges of family rank, property, connections and educational advantage.
individual merits and would rise or fall accordingly. Of course, Masterrap has an entirely different perspective.

For Masterrap, the American Express Gold Card life is an American dream he is never likely to have. Indeed, Masterrap may literally not know anyone who has an American Express card or even a checking account. Masterrap learned very early in his life that equal opportunity “on the merits” did not mean the same thing for him as it did for Vice President Dan Quayle. When Masterrap looked in a mirror there was no potential future President staring back at him, nor for that matter even the guy in the American Express advertisement. ⁷⁷

When alternatives to the drug business are offered to Masterrap, they are often proposed either in terms of low paying jobs without a future or an educational system that means very different things to George Bush’s children and grandchildren, even “the little brown ones” ⁷⁸ than it does to Masterrap. The opportunities afforded to people through education look very different from the top of society than from the bottom. The difference in the educational system is reflected in the relative amounts of money spent in the districts where the children of those with money and power attend school and the amounts spent in districts where Masterrap’s family is likely to live; a poor section of New York City, San Antonio, New Jersey or wherever. ⁷⁹ The differences are also reflected in terms of the value the school system places on Bush’s European-based cultural roots versus those of Masterrap, which are Indian, African, Caribbean, as well as European. ⁸⁰ The school system may still reinforce persistent American notions that people of color are marked with badges of slavery and inferiority no matter what their background and abil-

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77. Cj. Spann v. Colonial Village, 899 F.2d 24 (D.C. Cir. 1990) (holding that a pattern of using only white models in advertisements may be actionable discrimination under the Fair Housing Act); accord, Rubin, Advertising and Title VIII: The Discriminatory Use of Models In Real Estate Advertisements, 98 YALE L.J. 165, 177 (1988).
Finally, and perhaps most important of all, the expectations the school system holds for Masterrap and his kind(s) are horrible self-fulfilling prophecies, ones that dash the dreams of children and exchange them for desolate nightmares. As seen from atop Quadrant II, Czar Bennett and his drug war crusaders represent a modicum of power; police power, both federal and state. But Bennett is, at least in his own mind, much more; Bennett, and many others like him, sincerely believe that their anti-drug position is morally righteous. The view from the top is that law enforcement has been endowed with not just legal but also moral authority to keep these harmful substances away from the people who want them. With such moral authority, it is hardly surprising that Drug Czar Bennett advocates and supports putting tens of thousands of children of color in jail for their “own” good.

The view from the bottom is quite different. Bennett has virtually no authority beyond whatever police power he can command, and certainly no moral authority. Quite accurately Bennett, and sometimes even the police, are viewed as outsiders, an occupation force who have come in to preach to those trapped within the ghettos about why they should obey someone else’s law and not sell or use drugs. Except for the raw power Bennett represents, why should Masterrap, his family or community consider Bennett a legitimate source of moral wisdom and guidance when Masterrap quite properly feels that Bennett and those he represents would prefer that Masterrap and his community be the contemporary equivalent of


82. The classic anecdotal illustration of this was Malcolm X’s experience in grammar school where Malcolm’s eighth grade English teacher told Malcolm that notwithstanding his top scholastic ranking, his dream of becoming a lawyer was not realistic for a “n——”; and instead he should use his good hands to become a carpenter. A. Haley, The Autobiography of Malcolm X: As Told To Alex Haley 36 (1973).

83. The police are sometimes welcomed and sometimes shunned like pariah. Reaction to police authority depends in part upon whether the police are viewed as an occupying force of some remote power or as a law enforcement component for the local community. Terry, Bronx Clash With Police Angers Citizens’ Patrol, N.Y. Times, Sept. 12, 1990, at B2 col. 1 (reporting one African-American and Latino community’s view of the police as a “mixed blessing”). The efficacy of the police is greatly enhanced when they are part of a community, enforcing the laws the community most want enforced in ways acceptable to the local community. See Friedheim, About Cops: Bears are Made for Walking, N.Y. Newsday, Feb. 26, 1990, at 38 (reporting Police Commissioner Brown’s concept of community based policing).
Ralph Ellison's Invisible Man? Bennett is viewed from the bottom as no more legitimate or genuinely concerned about Masterrap and his community than would be an occupation army by those in the land they occupy: a smooth operation may well depend upon a continuing perception that the army is needed, but that hardly convinces the occupied that the army acts in their or any other legitimate interest.

From on high in Quadrant III, the problem of drugs in America is one of maintaining the line against the obvious evil of drugs through a strong criminal law enforcement while seeking a better society through worthwhile social programs. From the top this is the perspective of the morally righteous well-intentioned social worker or minister. In this Quadrant, the view from the top entails efforts to secure "civil rights" and "equal opportunity" and earnestly express an intention to help the less fortunate like Masterrap. Efforts must be expended to secure Masterrap and others from the evils of illegal drugs to which they are sorely tempted; Masterrap must be sent to jail and drug users to mandatory drug treatment. The people in this Quadrant believe they know what is best for others—or at least what is worse for them.

Those in this Quadrant of the drug policy debate are represented sincerely and eloquently by people like Congressman Charles Rangel from New York's Harlem. Congressman Rangel tells us that he knows what is best for Masterrap and others—good clean drug-free living and substantial governmental intervention to create the social conditions and educational opportunity within which Masterrap can achieve and maximize his potential. This is the Quadrant which, in the name of our righteousness and Masterrap's own best interests, does both the most for and against Masterrap.

Viewed from the bottom, Quadrant III may look quite different. From the bottom, Congressman Rangel may look like he is representing those within his community with relatively middle class values, organizational ties and expertise. People like the teachers, the social workers, and even the police persons; but not necessarily those like Masterrap. Masterrap does not vote, his parents are not entitled to vote and he does not go to school or church or any of the other institutions from which most of Congressman Rangel's constituents are drawn. So for Congressman Rangel and the ministers, teachers,

84. Mayer, supra, note 65. (noting the ineffectiveness of the Bush/Bennett approach given that young people like Masterrap feel locked out of and excluded from the system).
social workers, police, hospital workers and others with him in Quadrant III, Masterrap's world view may exist alongside their own, even in the same community, but Masterrap nevertheless does not count in quite the same way. For example, Masterrap does not understand why the marijuana his Rasta friends enjoy is illegal to sell or smoke, but it is forgivable that federal judges and proposed bank regulators "experimented" when they were younger with marijuana and cocaine. Nor is Masterrap quite sure why middle class substance abuse is an illness and lower class drug abuse is a criminal offense requiring that even afflicted mothers be sent to jail.

Beyond these race and class-based perspectives on very similar behavior, Masterrap's basic critique of Quadrant III might well be that all that those in this Quadrant can do is preach about morality and the need for investing in people. They cannot deliver more than rhetoric to Masterrap and much of his community. The education, economic opportunity, and the minimum goods and services necessary for life are beyond their ability to deliver. The rights and opportunities about which the well intentioned persons of Quadrant III speak of are at present only the hollow words and dreams of the well-intentioned. And what little resources are available may support a few middle-class ethnic escapees to the suburbs; but it never quite trickles down to Masterrap's kind. The view from Masterrap's bottom: he has his own power to get the economic resources he thinks he and his family need and want—selling drugs, providing a service to those who want it and are willing to pay for it.

Even those in Quadrant IV—those that view the possibility of drug decriminalization from the top—do not necessarily see the world through the same lens as Masterrap. Viewed from the top, Quadrant IV reconceptualizes the drug problem for all substances as a medical problem which can be cured through social programs.

85. Nash, Senate Confirms Savings Chief, Letting the Bailout Plan Proceed, N.Y. Times, Apr. 5, 1990, at A1 col. 2 (reporting Timothy Ryan's confirmation as director of the Office of Thrift Supervision and Court of Appeals Judge Douglas Ginsberg's nomination to the Supreme Court notwithstanding their admitted use of cocaine and/or marijuana).

86. Malcolm, Affluent Addicts' Road Back Begins in a Climb Past Denial, N.Y. Times, Oct. 2, 1989, at A1, col. 4 (reporting affluent addiction as a health concern); id., Oct. 2, 1989, at 24, col. 2 (typical middle-class addict is white father in his 30's or 40's seeking treatment because of social pressure not criminal prosecution).

87. See, e.g., Suzanne R. v. D'Elia, N.Y.L.J., Feb. 16, 1989, at 27, col. 5 (Sup. Ct. Nassau Cty) (holding that § 1023 of the N.Y. Family Ct. Act empowers the court to take babies away from drug addicted mothers); Whitaker, Protecting Baby from Mom, N.Y. Newsday, Nov. 6, 1989, at 8 (reporting the Florida conviction of a 23 year old woman for "delivering cocaine through her umbilical cord" to her child).
which rehabilitate, educate and create alternative opportunities for those likely to sell or abuse drugs. These programs, financed largely it is claimed through the "decriminalization dividend", should in the long run both control substance abuse and create social and economic opportunities for those now treated as criminals by virtue of illegal drug use or sale.

From the bottom these proposals sound like more utopian promises which will never be delivered. Much of the success of the Quadrant IV approach depends upon effective drug abuse education and rehabilitation. Yet the education system has to date not managed to address any of Masterrap's other educational needs or for that matter even respect Masterrap and his culture as worthy of a significant place in the curriculum of the schools where Masterrap, his children and his community have attended or will attend school. Why should a post-decriminalization educational regime do a better job at educating Masterrap, his friends, parents and children with respect to drugs or anything else than the one now in place? Surely the promised additional resources from the decriminalization dividend, even if delivered, (which Masterrap might well doubt) will not alone suffice to cure the failure of the school system to engage the African-American or Hispanic youth presently dropping out at a rate approaching 50% in New York City, according to some estimates.  

And Masterrap might have similar doubt about the efficacy of the promised new medical delivery network. Will the decriminalization dividend really provide for Masterrap's addicted sister the same care at New York Daytop Village as those on the top of society can buy with their greater resources from the Betty Ford center? Masterrap understandably might have some doubts about the efficacy of the means those in Quadrant IV propose to contain and control lower class drug abuse. Maybe Quadrant IV's proposed decriminalization will just create a community with many more drugged out zombies.


B. The View from the Bottom

The drug problem is not a problem with chemical substances called drugs; rather it is a problem with people who sell and use drugs. These people, drug users and sellers, have families and are part of communities and networks of people who do not reject them ipso facto because the drug czar or anyone else who has not earned their trust and respect says so. Drug users and sellers are the loved ones of parents, spouses, children, families and friends. They are not disconnected objects of someone else’s policies. They are people who are part of other people.

For example, children cannot be trained not to love and emulate their families and friends, at least not without incurring substantial and probably unacceptably high social and psychological dislocations. It is simply not realistic for any drug policy to expect or rely upon willing cooperation from a network of families and friends in implementing a policy they have not actively been involved in both designing and implementing. It is conventional wisdom that if people have not invested in the process of law making, they probably will not buy into the resulting laws. One reason democratic process leads to better social policy is that when people participate in the
process of law making they are more likely to be self-policing. Democratic approaches building upon positive community values work better than imposing an outsider's will.94

To have an affect on the children of Masterrap and his community, it is necessary to be part of their world too. Being a role model for a child cannot be accomplished at a (safe) long distance through Madison Avenue slogans like “Just Say No To Drugs”, or scare tactic commercials that do not accord with reality; representatives of other values must also be in the children’s communities. In America, which remains segregated by race, ethnicity, and increasingly by class even within groups,95 often the only role models for youngsters are the negative role models on the street corners with them. If other values are to be experienced and hopefully adopted by the currently excluded youth, some “nice” people of all kinds, but especially potential positive minority role models must leave their suburbs or “condos” and go where the youth-in-need are—back to the ghettos.

Current law enforcement efforts fail largely because they literally cannot take into account the frequent normalization and acceptance within Masterrap's community of the criminal sanction. Deterrence theory is rendered almost impotent if the target group begins to see jail as a boot camp for drug dealing and the threat of longer sentences a sign of just how worthy of (negative) attention the target must be.

Moreover, although there are strong and decent moral influences in Masterrap's community, the real economic power that money provides drug dealing children can be so disruptive to the entire value transmission network and parental/family control over their own children, that nothing short of a massive infusion of posi-

94. Some commentators have recognized that any drug policy aimed at influencing children in a world of drugs must take into account the deep emotional relationship involved. Cf. Sanchez, Still Seeking Answers, Wash. Post, May 12, 1990, at A1, col. 5 (discussing the emotional confusion of Washington D.C.'s youth caused by allegations against Washington's Mayor Marion Barry). Typically, however, such efforts have not suggested that the process of drug policy formation be changed. Rather, these commentators assume that the moral/political views that they bring to bear on the child's situation are correct and that the parents and communities within which these children are found do not and should not have any say in what the policy ought to be. The policy is settled outside the community before these experts and social workers, for example, go into these communities and try to foster these policies. These modern day missionary approaches essentially seek ways of getting other people's children to cooperate in the drug policies they bring into the community from outside.

95. Increasingly, affluent African-Americans are not part of the same sphere as their poor brothers and sisters. See K. Phillips, The Politics of Rich and Poor: Wealth and The American Electorate In the Reagan Aftermath 207 (1990); Crenshaw, supra note 65, at 1383-84.
tive nurturing adult influences and the means to re-assert and maintain economic control over these children will realign the current imbalance away from the influence, both symbolic and real, of the lucrative criminal alternative. The mother whose teenage son can earn more in a day than she makes in a week can hardly exercise the kind of economic control necessary to transmit proper moral values. Increasingly labelling children as criminals is not going to decrease the disruptive influences of drug money or enhance their self esteem or that of those following them within the community.

As mentioned in connection with Masterrap's view of Quadrant III from the bottom, significant segments of the excluded view the police as a group of outsiders imposing someone else's will on an occupied community. These “occupiers” kill our children, harass members of the community on the basis of their race, and arrest “illegals” and others under laws that the community had little to do with formulating and even less to do with enforcing, either at the police or prosecutorial levels. As a result, there may be little respect for law when it is imposed from the outside and does not coincide with community desires.

Does anyone believe that the communities most affected by the police and prosecutorial decisions believe that decisions to prosecute women who use cocaine and take their children from them are fair and imposed as readily on affluent white women as they are on poor African-American or Latino women? Do the extended families of

97. See, e.g., Marriott, This Wasn't the Boy East Harlem Knew, N.Y. Times, Feb. 7, 1990, at B1, col. 2 (noting the shooting death of a 13 year old boy by police who was thought to be robbing a bodega); Gritty Eulogies for a Youth Killed by an Officer's Bullet, N.Y. Times, Feb. 2, 1990, at B1, col. 2 (reporting the death of a 14 year old robbery suspect who police mistakenly believed was armed). The police officer involved in the latter shooting was indicted. Lubasch, Brooklyn Jury Indicts Officer in Boy's Death, N.Y. Times, Mar. 31, 1990, §1 at 27, col. 2 (charging second degree manslaughter).
98. See, e.g., Belkin, supra note 63, at A1, col. 5, (noting the criticism of “drug courier profile” stops at airports that “[t]he darker your skin the better your chances” of being stopped).
99. For example, while there is ample evidence that drinking while pregnant can cause serious prenatal injury, e.g. Rosenthal, When a Pregnant Woman Drinks, N.Y. Times, Feb. 4, 1990, § 6 (Magazine), at 30 (asserting that 8,000 alcohol-damaged babies are born in the U.S. each year), there is no evidence of law enforcement gearing up to arrest and prosecute middleclass pregnant woman at country clubs with drinks in their hands. The idea sounds absurd. Yet somehow it does not sound so absurd to prosecute a poor addicted pregnant woman for the harm she is causing to her unborn child while using cocaine. E.g., Whitker, supra note 87. If the crime is the deleterious effect of voluntarily consumed chemicals, the assault on the un-
these children believe that this is the best solution to a bad problem? The evidence suggests that when left to its own devices, the community response is for the grandmothers or other family or friends to raise the children of addicts, while hoping for some rehabilitative help for the addicted mother. But the point remains that Master-rap is presently excluded from the drug policy debate; his voice and those of his family and community may be the only voices that hold the keys to a non-tyrannical solution to the drug problem.

C. Nightmares and Dreams

What does it mean to listen to Master-rap's voice? First and foremost it means creating a means for registering and including Master-rap in the choral fugue we call democracy. Reconsideration must be given to changing the ways in which policy options are developed and preferences are registered. This might be done through models of strong democratic programs. Of particular interest born, what accounts for the difference in treatment of the middleclass pregnant alcoholic and the poor drug addict? The legality of the substance used would not appear to be a sufficient explanation for such discrimination.

100. Gross, Grandmothers Bear a Burden Sired by Drugs, N.Y. Times, Apr. 9, 1989, §1, at 1, col. 5.

101. The suggestion here is that this society needs to learn to listen as a means of mutual empowerment much in the way suggested by some Feminists and New Race Theorists. See, e.g., M. BELENKY, B. CLINCHY, N. GOLDBERGER & J. TARULE, WOMEN'S WAYS OF KNOWING 47 (1986); Delgado, When a Story Is Just a Story: Does Voice Really Matter, 76 VA. L. REV. 95, 99 & n.25 (1990). While the impulse of New Republicanism moves in this direction, it often does not go far enough, given its almost exclusive focus on theory, without direct action and involvement and its overdependence upon variations of an almost Greek-like citizen elite. See Brest, supra note 66 at 1626. Also consider both Bickel's and Karst's earlier doubts about whether the formality of citizenship should be a prerequisite for political participation other than the formal right to vote. See A. BICKEL, THE MORALITY OF CONSENT 53-54 (1975) (suggesting that inherent limitations in the conceptual underpinnings of citizenship should make formal citizenship dispositive of as little as possible); Karst, The Supreme Court, 1976 Term-Foreword: Equal Citizenship Under the Fourteenth Amendment, 91 HARV. L. REV. 1, 44-46 (1977) (suggesting that the technicality of citizenship should play a minimal role in defining participatory rights in the American polity). At least in the context of formulating drug policy, if not in society generally, new democratic vehicles which include all participants need to be developed and used.

102. B. BARBER, supra note 6, at 307. While reference is made to New Republican democratic theories and similar approaches to reinvigorate and reauthenticate American government, this is done with Richard Parker's admonition in mind that, maybe, all that ought to and needs to be done cannot be done within the bounds of the present old and venerable Constitution. Parker, The Past of Constitutional Theory - And Its Future, 42 OHIO ST. L.J. 223, 258-59 (1981). For example, the original American constitution reflects a profound and no longer tenable distrust of the majority of American people, clearly preferring "representative" government by a few white men to allowing the majority of women and men, black, brown, yellow and white, direct control over their own lives. See Chemerinsky, The Supreme
might be deliberative neighborhood assemblies,\textsuperscript{103} technologically innovative means of equalizing access to information\textsuperscript{104} and expression of different perspectives on policy questions such as drug decriminalization.

Some experimentation with more decentralized forms of administering justice might also be warranted. For example, perhaps communities should be allowed to decide whether minor drug sales or use should be treated as crimes at all. This would decentralize the prosecutorial and police charging function, and address legitimate community concerns that the current centralized exercise of police and prosecutorial discretion are not attuned to local drug policy priorities. And if minor infractions were to be treated as crimes, police and prosecutors accountable to local residents could decide at what point crimes should be treated as felonies and turned over to superior prosecutors, rather than being handled by local community-based systems of justice.\textsuperscript{105}

Similarly, the theoretical framework within which drug policy is formulated should be one which creates public space appropriate for democratic decisionmaking as a transformative educational process grounded in dialogues of freedom.\textsuperscript{106} Of course, the public space in this context might be slightly different from the one that Professor Maxine Greene of Columbia’s Teacher’s College had in mind. The space required might start out as street corners, parks, or restaurants where Masterrap and some of his people hang out.\textsuperscript{107} The particular

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\textsuperscript{103} See B. Barber, supra note 6, at 273-78. Nothing in these programmatic aspects of Barber’s “Strong Democratic” programs would seem to require that participation be limited to only the judicial citizens in a community. Some form of participatory right might be extended to non-citizens and perhaps even to some youngsters not old enough to vote but old enough to have a substantial impact upon any drug policy. In this regard, Barber's concept of the citizen as neighbor is a useful starting point. See id. at 223.

\textsuperscript{104} Id. at 273-78; cf. Pollack, New Interactive TV Threatens the Bliss of Couch Potatoes, N.Y. Times, June 18, 1990, at A1, col. 1 (reporting possibly pertinent advances in interactive television).

\textsuperscript{105} Some rural communities in America enjoy such a decentralized, locally accountable system. And this system apparently sometimes operates with a different set of drug policy objectives. See, e.g., Johnson, High in the Hollows, N.Y. Times, Dec. 17, 1989, § 6 (Magazine), at 30.


\textsuperscript{107} This suggestion is not at all inconsistent with the concept Professor M. Greene has...
proposals here are not necessarily what is important. What is important is that the process of democratic reform and revitalization begin by opening up discussion with those affected by the drug policy.\textsuperscript{108}

Whatever theoretical approaches are tried initially, there are at least two components to any strategy for including Masterrap and those now underrepresented from his community. First, those involved in formulating and implementing drug policy must go where Masterrap's community is and interact with the social networks which operate therein.\textsuperscript{109} Second, greater outreach efforts to bring Masterrap within the ambit of social institutions must be made with a commitment to change those institutions or help Masterrap and other disenfranchised members of his community develop alternative institutions which address the needs of his community. Such efforts would include, but not be limited to, schools\textsuperscript{110} and churches.

What is important, however, is that the new democratic model commence by talking with (and not at) Masterrap, his family and his community, like they were people and counted.\textsuperscript{111} After all, they

in mind. The "place" where we work out who we are and our interconnectedness is not of great significance to Greene for the place is as much in our minds perceptions of each other and our world as it is in the classroom or street corner. \textit{Id.} at 120, 122.

\textsuperscript{108} The focus of this critique may reflect and be symptomatic of other areas of dysfunction in American democracy. \textit{See}, e.g., Reinhold, \textit{Apathy and Disaffection on the Rise Among California Voters}, N.Y. Times, June 12, 1990, at A14, col. 2 (noting that despite wider formal availability in the franchise, political power is becoming more concentrated in the hands of older whites as minorities and others lose faith in the significance of voting); \textit{Times Mirror Center for the People & the Press, The Age of Indifference: A Study of Young Americans and How They View the News}, 9, 13, 22, 25 (1990) (reporting the same as well as less interest by young people in serious news and public affairs except for abortion); M. Tushnet, \textit{supra} note 58, at 103 (noting that low voter participation raises questions as to the legitimacy of representative government). These more generalized problems with our democracy do not, however, adequately reveal the uniqueness of Masterrap's perspective and the need to touch that experience in the movement from vague abstraction to the meaningfully concrete. \textit{Cf.} Cook, \textit{Beyond Critical Legal Studies: The Reconstructive Theology of Dr. Martin Luther King, Jr.}, 103 \textit{Harv. L. Rev.} 985, 1038, 1043 (1990) (suggesting that Dr. King's vision of the Beloved Community entailed recycling power through the psychologically, politically and economically disenfranchised, but with a recognition of the limits of our knowledge, theory and short term ability to transform society).

\textsuperscript{109} This is not to suggest that Masterrap and his community might not also have to reach out to other communities. This is however, generally not the problem with policy formation and the underclass. Generally, members of these communities are all too willing to reach out to the other side, it is the other side which is not willing to reach in, go to and otherwise legitimate Masterrap's communities, the cordoned off urban ghettos in America.

\textsuperscript{110} \textit{See}, e.g., Wells, \textit{Preschool Program in New York City Is Reported To Surpass Head Start}, N.Y. Times, May 16, 1990, at B6, col. 1 (reporting findings of a study of New York City's "Project Giant Step" preschool program).

\textsuperscript{111} \textit{See}, e.g., Cook, \textit{supra} note 108, at 1043. (reflecting upon King's willingness to process and redefine his social theories through direct interaction with the affected
are people and ought to count; and no drug policy or democratic theory which excludes them\textsuperscript{112} is going to fit comfortably within our long term democratic ideals.\textsuperscript{113} But what would Masterrap say? What would this conversation with Masterrap sound like?

First, let us hear what the real Masterrap has already told us through Professor Terry Williams' excellent work:

"Coke ain't real. . . If I told you half the things that go on in this place you wouldn't believe me. I wanna tell you my life story one day, and after you put it down I wanna see it and maybe then I'll believe this is really happening and not a dream.

. . .

Dominican kids have a lot of respect for their families, especially their mother. Most of the Dominicans around here come here to make money. They get into drugs—and other things, too—and then often go back to Santo Domingo . . .

. . .

You know, this 'paper' [money] thang ain't gonna last forever. I wanna get hooked up with what's real. I give my moms money from time, and I give my uncle some cash, too, as a back. They know I work here [in the apartment out of which the cocaine is sold] . . . but they know how to help me out too. . . . and they advise me on things and help me when I need it."\textsuperscript{114}

First, note that Masterrap already knows that there is a level of unreality associated with money making in the cocaine business. In a sense Masterrap knows that his illegal business is an unreal dream which may produce his worst nightmares. Masterrap already knows that survival in the highly competitive and violent cocaine business does not last forever.\textsuperscript{115} Finally, Masterrap shares with many psycho-
logically disenfranchised persons, the sense that home, the place where their long term interests lie, is in a place other than where their drug business and all of its awful consequences are found. To continue the conversation with Masterrap, perhaps we all need to wake up, including Masterrap, and start with what is real.

The conversation with Masterrap might continue:

"But Masterrap why do you say that coke ain't real? Isn't selling coke your way of trying to get your piece of the American dream?

"Yhea money is important, you gotta have some paper or like you can't eat and shit. But what I really want is a future and a family and all that stuff. That's why I gotta get my self together and go somewhere else, to Puerto Rico or somewhere like that (not Santo Domingo; it's too poor). . . . O.K., so I know it's not real. I mean it all happens real fast, you can make so much money, but it can get taken away real fast too, you know what I mean?

"Getting caught by the cops and being sent to jail?"

"That too, but the real deal is 'illin'. . . . Somebody can just take you out of here for the money, rob your shit or kill your family or like kidnap your kid or something, you know what I mean. . . . this ain't real cause you don't know if its gonna last. . . . not even until tomorrow. You could even get killed, like any day and any time. This dream is more like a Freddy Kruger nightmare!"

"Then why do you sell drugs Masterrap?"

"Cause like I can't do nothin' else, man, I can't work in no McDonald's, that just ain't enough, there ain't no future there . . . and anyway I got my pride and shit and this ain't my country anyway."

"Yhea, you know you always say that; but you know it's not true; your country is where you are. THIS IS YOUR NEIGHBOR-

B1, col. 2.

116. This is not at all an uncommon characteristic for the newcomer/outsider. See M. GREENE, supra note 106, at 9. What is noteworthy is the extent to which similar phenomena apply to African-Americans and some poor whites who have been in this country for generations but nevertheless view drug laws as belonging to some outside authority which is not applicable to them because they are from "down south" or "the country." Cf. Johnson, supra note 105, at 49.

117. In a sense, the language of a "War on Drugs" is an unreal dream from which we all need to be awakened. It is not a war on drugs, but a civil war of part of the society against another part of the society. Rangel, supra note 44, at 43-45, 47 (recognizing that current drug policy is a civil [and international] war where nearly ½ of all Americans use and some additional number distribute increasing supplies of drugs). Before the conversation can commence all sides to the conflict must wake up and acknowledge the other side's humanity.
HOOD AND COMMUNITY RIGHT HERE—NOT OVER THERE, HOMEBOY; RIGHT HERE.”

“No man, that's bull—I'm not from here. I'm going somewhere else as soon as I get my thang together.”

“Yhea o.k., I hear you; but man how long have you lived here? How many members of your family are here and going to stay here no matter how rich you get? Your abuela lives here and goes to Los Santos Iglesia right down on Broadway. Do you really think she or the rest of the family are all going to move? Does she think that what you are doing is chill? Is your abuela really proud of you man? Be serious! This is not the kind of people you come from and this is not what your family wanted the American Dream to be about for them. How many of your family and friends have died here and are dying because of the bull you are putting out? DO YOU KNOW WHAT TIME IT IS? IT IS TIME FOR YOU TO WAKE UP. WAKE UP!”

“Well... hello... I hear you Homie; but wake up and do what? I STILL don't know yet. What can you do for me and what do you want to do with me to help us build a good life? Like are you willing to spend some of the gap [money] you were planning to spend on your Acura Legend, Jag or BMW on trying to help me get it together? If not, then what are we REALLY talking about? Did you bring your checkbook to the table? What is the REAL deal Homeboy?”

In this part of the conversation, one might explore with Master-rap a range of traditional and nontraditional educational and vocational options. Some of these alternatives might only be realized from both sides of the conversation as possibilities only after the underclass and the privileged start to talk with each other. For example, Master-rap might resist going to any traditional school setting because it just does not feel right or it disrespects him. If this were the problem, what would be wrong with “conversating” until an acceptable educational forum were evolved. The point is that most people in Master-rap’s family and community want education and want work. Master-rap is willing to get trained, work, and explore possibilities from formal schooling to training in the trades, as well as paid forms of community services, for example.118

118. As of the time Professor Williams study ended, the real Master-rap was no longer dealing cocaine. He was involved with one woman, had a child and was gainfully employed,
But there are other aspects to the conversation with Masterrap which need to be addressed:

"And I want some respect—you know, I don’t want those cops to like be dissin’ [disrespecting] me all the time. It don’t make no difference whether you doin’ drugs or not, the cops still treat you like you ain’t nothing! . . . And when I go to school with my daughter I wanna be treated right like I’m her father and my opinion counts. I got a right to know what they doin’ with my daughter; she’s my kind. How come they don’t talk right to me in that school? . . . Like they don’t respect who and what I am . . . They even make fun of my mother’s accent, our language, where we are from, and our curly hair and skin colors. . . Mi Negro! Oye a mi corazón, a mi voz y a mi comunidad. . . Mira, don’t shut us out."

Masterrap might continue as follows:

"If I’m gonna wake up, I need something real to wake me up. Sure, jail is real and that sometimes wakes me up. . . but if you don’t have anything else to offer but jail and McDonald’s, then this is all bullshit! Do you have anything to offer? . . . If not, then I just might as well keep on keepin’ on. . . ."

"Well, when you say you need something real to wake you up, like what are we talking about?"

"Like you know before we can talk about anything—cause I could do a lot to help you out here and everything with these kids and starting up some businesses in the neighborhood, you see I got some gap stashed away and some houses that need fixin’ up—like what can you do for me with this criminal thang? Can you hook me up with like a free ride, I mean like amnesty and shit?"

"Now I don’t know Masterrap; you may have to be punished for the wrong that you have done cause. . . ."

"Yhou, I thought it was El Señor that said vengeance is mine and since Los Blancos killed God, what are you tellin’ me, that God has been reincarnated in this Bennett guy or something. . . . I haven’t killed or hurt anybody; everyone I sold to was an adult and wanted the shit."

"Oh really, you haven’t hurt anybody? What about the drugs you

albeit off the books, as a cook in a restaurant in Washington Heights making $600 a week. T. WILLIAMS, supra note 1, at 125. The price to save Masterrap, our children and our community, may not be that high: some conversation, some respect, some power and some (but not necessarily much) money.
gave and then sold to Maria, you know her baby was born addicted to crack! Do you think people around here are just going to forget about that when they see that little baby everyday? Masterrap, you are responsible for what happens to other people and our neighborhood because of the drugs you sell!

“And what, America is not responsible for leaving me out? I didn't have a chance from the day I was born and nobody really even cares now. Look man, if you do not want to help me do the right thang, to help me out and my family then what's the use of talking.

. . .”

“Not so fast, homeboy . . . maybe we can work something out . . . look all I know is that I'm determined to deal with you if you are determined to deal with me. . . .”

“ESTA COOL . . . talk to me and I to you and let's see where this thang goes; but you know I may go back to selling drugs. . . .

“And I may go back to trying to catch you and putting you in jail; but then wouldn't we both just be going backwards? Maybe if we can get some other people involved in this conversation—like your mom or abuela or neighbor we could get some fresh ideas on how to get to the next step.”

“Sounds good to me, because I don’t really wanna' go to the joint [jail] or die; and don’t you think you had better bring some other people to your side of the conversation, like somebody from those big businesses or something. . . .”

This conversation with Masterrap or even others from his community not involved in crime would not be easy. But what Masterrap wants is not extraordinary. Masterrap's wants includes power over his own life, respect for him and his culture, a future he can believe in for his children and enough money to live on. This sounds like a human voice, doesn't it? Maybe we should listen to Masterrap's voice and the other ignored voices in his community who, although profoundly touched by, are not involved in the drug business. We would hear intelligent people with insight into how to formulate effective drug policies speak back.

In waking up Masterrap from his and our opposite but mutual nightmare, the illegal drug quagmire, new visions must be fashioned with Masterrap and his community. Although the precise contours and content of those visions must be evolved through vital and inclusionary democratic processes, some of its content can be surmised.
Masterrap must be offered new dreams toward which he can aspire and adequate rewards along the way to his attaining those dreams to sustain his efforts. A dream and a program are necessary: education, a meaningful job, a family, a community which cares about him, a real investment in him and the future of America. As we work together with Masterrap towards discerning and then building these visions, we must be prepared not only to come up with resources but also to change in ways that make Masterrap welcomed and a part of a new America. If it is too much to forgive and work with Masterrap, are we prepared to create a society at least hospitable to his children and the other law abiding but still excluded segments of Masterrap's community? No longer can America rest on the five year effort of President Johnson's Great Society twenty-two years ago as an excuse for not including people not yet born into the American Dream of the second millennium.