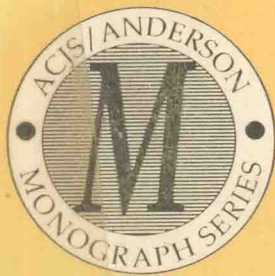


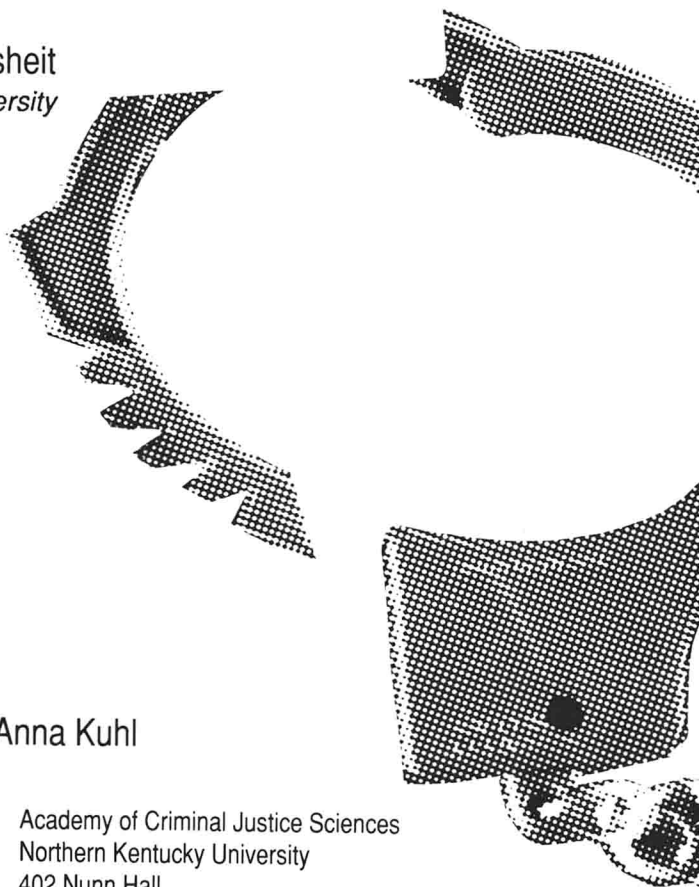
Drugs, Crime and the Criminal Justice System...

Edited by Ralph Weisheit

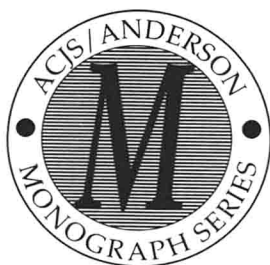


Drugs, Crime and the Criminal Justice System

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Drugs, Crime and the Criminal Justice System

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Preface

As Series Editor for the conjoint Monograph Series between the Academy of Criminal Justice Sciences and Anderson Publishing Co., it is both exciting and humbling to introduce as the first volume in this series Ralph Weisheit's *Drugs, Crime and the Criminal Justice System*, a book that reviewers have deemed to be on the cutting edge of research in the field of drugs and criminal justice. Ralph has put together a group of authors who examine the dimensions of the drug problem specific to crime and criminal justice by "cutting through the smokescreen" raised by the government and other persons involved in key policy decision-making capacities. Indeed, what makes this book so stimulating is the depth and breadth of the analysis of the drug problem specific to crime and criminal justice through the diverse political and philosophical positions of the various chapter authors.

While this is the first book in the Monograph Series, let me whet your appetite for the future. Forthcoming in the early fall of 1990 will be Robert Bohm's volume on the "Death Penalty," followed by Gerald Robin's volume concerning "Gun Control." These two volumes will be followed closely by Gary Cordner and Donna Hale's book on "Police Administration" and Michael Steinman's book, which examines the latest research on "Domestic Violence." Please keep these volumes in mind either as reference books or as you plan your future classes.

Anna F. Kuhl
Eastern Kentucky University

Acknowledgments

Contrary to the warnings I received in advance, this book was a genuine pleasure to compile and edit. The authors were prompt and thorough in submitting their materials and to a person were easy to work with. The series editor, Dr. Anna Kuhl, was supportive throughout and gave me considerable freedom to shape the book into its present form. I would also like to thank Patricia Mott, who provided assistance at various stages of editing and mailing. The task would have taken much longer and been far more difficult without her help.

—Ralph Weisheit

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1

Declaring a "Civil" War on Drugs

Ralph A. Weisheit
Illinois State University

The language of war is commonly invoked to describe current anti-drug efforts. The term "war" expresses the sincerity and zeal with which anti-drug efforts are undertaken, but thinking in terms of the language of war may also be a useful tool for examining current drug policies. The discussion that follows is designed to raise issues which haunt current anti-drug efforts; it is not intended to provide easy solutions. America has acknowledged the existence of a drug problem for more than three-quarters of a century, and during that time has employed a variety of countermeasures. Despite this, prohibited drugs abound. Anyone who argues that the solution is simple, obvious, or could quickly be determined with more resources has not seriously studied the problem. The purpose of this introductory chapter is to raise broad issues which transcend any single problem related to drugs and crime, setting the stage for what follows. The remaining chapters in this book explore specific aspects of the drug problem. The writers focus not only on different issues, but approach these issues from different philosophical and political positions. Combined, these authors provide a good sense of the breadth and complexity of the drugs-crime problem.

In 1971, President Richard Nixon declared a "war" on drugs. The phrase stuck and it has become almost obligatory for politicians to repeat it and to vow a new commitment to it. Nearly every current aspect of the drug issue is framed in the language of war or conflict. Using the language of war when discussing the drug problem is so common that its significance is sometimes lost as the phrase risks becoming a hackneyed cliché. Giving careful thought to all that the term "war" implies raises important issues. The language of

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war begs such questions as Who is the *enemy*?, Where is the major *front*?, What type of *warfare* is acceptable? and What constitutes *victory*?

WHO IS THE ENEMY? *Ch*

To declare a war on drugs implies that chemical substances are the enemy, but these substances are themselves inert, at least prior to their ingestion. The war is not against drugs, but against people who hold particular values and consequently take particular actions regarding drugs. The significance of this point cannot be overstated, for it means that any war on drugs is really a civil war in which the forces of society are marshalled against some of its own citizens.

It is difficult to win a war in which the enemy is hard to identify, but this is precisely the problem with current anti-drug efforts. Except in extreme cases, drug users do not stand out from other citizens in either their appearance or behavior. If they did, employers would not find it necessary to conduct drug tests to identify users, and it would be unnecessary to test arrestees or probationers to determine whether they are drug-free. In fact, the current emphasis on drug testing seems at least partly related to the need to distinguish between "good" and "bad" people (i.e., drug-free vs. drug-using) in much the same way that mental testing was once used to distinguish salvageable from hopeless offenders. For many it seems important to identify these "bad" people and treat them differently from other "good" criminals. Viewed in this way, it is easy to see why some argue that we should have little concern for the rights of drug users or drug dealers, but such arguments are based on two presumptions. First, it is presumed that drug users can be easily identified and that everyone is either a drug user or is drug-free. But, it is precisely the risk that innocent people will be wrongfully labeled that makes a recognition of basic legal rights essential. Drug tests can be in error, informants can present misinformation, and prosecutors have been known to lie or to conceal evidence which would prove an arrestee innocent.

Second, such arguments presume that drug offenders really are unlike other citizens or other offenders, and that the differences merit considering them as something "less than human." According to these presumptions, legal rights are for "good" drug offenders, and "bad" drug offenders are not deserving of their legal rights.

WHERE IS THE FRONT? *The U.S.*

Characterizing the regulation of drugs as a civil war implies that the front in the drug war is within the United States itself. Some might argue that

the real front should be the drug-producing countries, that if production were to stop in these countries, consumption would stop in the United States. While it is wise to be concerned with these producer nations, no successful policy to end drug use in this country can or should depend on regulating foreign production. There are several reasons for this.

First, with all its wealth, the United States cannot afford the prisons and police required to end drug consumption in this country. Most producer nations are far less equipped to afford the resources required to end drug production and trafficking within their borders. Economic forces have a way of defining and shaping moral imperatives. As the United States demonstrates in its subsidies to tobacco farmers, it is easy to rationalize the production of harmful addictive substances if enough citizens are economically dependent on them.

Second, as Peter Reuter (The RAND Corporation, 1988) argues, increased interdiction at the borders is likely to have little impact on the street price or availability of drugs in the United States. Most producer nations are only generating a fraction of their production capacity, and consequently, drugs from these countries are readily available at a low cost. Further, most of the value added to street drugs is added after they enter this country, which means that much of the wealth generated by the drug business (and the problems which arise from that wealth) is created after drugs enter the United States.

Third, there is almost no evidence that curtailing foreign sources of drugs would end the drug problem in the United States. Foreign sources have been heavily used because their drugs are cheap and readily available. It is foolish to presume, however, that if foreign sources were cut off, there would be no increase in domestic production. This is precisely what has happened in the marijuana trade. The domestic production of methamphetamines also demonstrates our ability to become a producer nation, and the development of "designer drugs" assures that heroin and cocaine substitutes will be available long after foreign sources of these drugs are shut down. It is even possible that, within the next 20 years, the United States will become an exporter of some drugs. Curtailing foreign drug supplies may lead to a temporary shortage of drugs and may lead to a change in the types of drugs used, but it is not a long-term solution to the drug problem.

Finally, while stopping drugs at the source has been supported by the rhetoric of the U.S. government, official actions have been ambiguous. Pressuring producer nations occurs only when it does not conflict with other foreign policy objectives. In reality, other considerations often place the United States in a position of tolerating or even facilitating international drug trafficking. There is evidence, for example, that the United States arranged the safe transport of drugs during the Vietnam War and, more recently in Cen-

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tral America. In some cases this included providing planes, pilots and instructions for avoiding radar detection. As long as such practices continue (and it seems likely they will), attacking the drug problem by ending production in source countries is unlikely to have much impact.

These conditions suggest that, for both practical and political reasons, the primary front in the war on drugs will continue to be the domestic front. The idea that the problem can be blamed on someone else has considerable public appeal, however, and the *rhetoric* of a foreign front is likely to continue for some time.

WHAT TYPE OF WARFARE IS ACCEPTABLE?

Although it is sometimes said that "All is fair in love and war," even war is supposed to be conducted following basic rules of human decency. Engaging in a war against ourselves demands a different set of rules than that used against foreign enemies fighting on foreign soil. Waging a domestic war against an internal enemy places restrictions on the intensity of the war and limits the tactics which will be defined as acceptable. It would be a small consolation, for example, for the United States to win the war against drugs at the price of abandoning democracy itself. Thus, the domestic drug war must be conducted within a social and political environment which supports extensive civil liberties for all citizens, a notion which contradicts the rules of conduct on a true battlefield.

In the past, the United States has adopted two strategies for fighting the war on drugs: the use of force through law, and the use of education and treatment programs. The language of war is the language of force, and force has been the primary strategy for fighting the war on drugs. In recent years the proportion of anti-drug expenditures which have gone to criminal justice agencies has steadily been growing, but in a war against ourselves, force proves to be of mixed utility. Police actions and strict legal sanctions clearly deter some from using drugs, and encourage some users to stop. But, force alone is unlikely to end the drug problem. Even in totalitarian states with extreme legal penalties, drug use continues. Following the Iranian revolution, for example, the death penalty was liberally used for drug dealers, but drug dealing and drug use continued and may have actually increased. In this country, marijuana use by young people is declining, but this reduction is apparently unrelated to the threat of arrest or formal legal action. While there are thousands of drug arrests each year, there are so many more drug transactions that the objective likelihood of arrest is remote. Further, proponents of get-tough strategies should be reminded that relaxing penalties for marijuana during the 1970s was partly a response to the dramatic increase in

marijuana use, an increase which *followed* a long period of harsh penalties for possession and sale.

Harsh penalties may also have unintended consequences. For example, as the number of drug offenders in prison continues to grow (the Federal prison population will soon be more than one-half drug offenders), this will provide an opportunity for the social networks of drug offenders to expand and may provide these offenders with a common sense of identity. Further, the simple fact that so many offenders are placed together will not only allow them to share skills and perfect techniques of drug trafficking, but sets the stage for the development of even stronger national networks of drug traffickers when these inmates are released.

As an alternative to force, some suggest that education and treatment are the most effective ways to deal with the drug problem. Like the use of force, a reliance on education and treatment will likely have some impact, but is of mixed utility. Education which focuses only on the "facts" about drugs is of questionable value. Doctors and nurses are very well-educated regarding the facts about drugs, but as a group they remain highly susceptible to drug abuse. Further, to focus on the "facts" is to deny that this is a war of values. Unfortunately for drug education programs, our educational system is much better suited to teaching facts than to changing values, and despite loud vocal expressions of concern by the public, our society holds considerable ambiguity about drugs. There is no doubt that people's values and beliefs change, but we simply do not know how to *make* them change in the desired direction, particularly on a national scale.

Like education, the idea of treatment is appealing but the process of effectively carrying it out is more elusive. People do stop using drugs, often without any formal treatment program, but current treatment approaches are not very effective at forcing people to stop. For even the best of programs, success rates of 25 percent are probably optimistic. Further, for many drug users, treatment may not be necessary. Using current estimates of users and of addicts, for example, suggests that about 10 percent of heroin and cocaine users can be classified as addicts, about the same percent of alcohol users who can be considered alcoholics.¹ For the other 90 percent, moderate or occasional use is the rule. Treatment also implies that the user has some form of physiological or psychological dependence on, or addiction to, the drug. To date, however, the very notion of addiction is controversial, with some suggesting that such intangible things as love may be considered addictive. It is easy to understand why treatment programs have such low success rates when the very thing they are treating is poorly understood.

In recent years, two new strategies have begun to take form, strategies which raise particularly troublesome issues and which may force many citizens to confront the conflicting values they hold regarding drugs and drug

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users. The first strategy, a peculiar mix of force and community education, encourages citizens to tell the police about drug use by friends and family members. Thus, the government is encouraging a civil war in the truest sense. Like any action which directly pits brother against brother, only time will tell if communities and families are eventually made stronger or are destroyed in the process.

A second evolving strategy is to shift the burden of proof to the citizen to demonstrate that they do not use drugs. Refusing to take a drug test, however noble the principle, easily leads one to be categorized as a drug user or as one who condones the behavior of drug users. Extending this reasoning sets the stage for intrusive programs which make every citizen a suspected "enemy." As an example, businesses in a Texas community are even giving 10 to 50 percent discounts to high school students who submit to drug tests and agree to periodic unannounced spot testing to assure that they are drug free. Students are not only joining the program in large numbers, but report that those unwilling to take part are ostracized and generally presumed to be drug users. Willingness to take part in such programs may quickly become modern-day versions of loyalty oaths given during the McCarthy era.

Sorting out proper strategies and deciding the appropriate blend of punishment, treatment, and prevention requires an understanding of what these strategies should ultimately accomplish. In other words, whether a particular set of strategies makes sense depends almost entirely upon the goals these strategies are intended to achieve. In the war on drugs, goals are often vague, making for better rhetoric than public policy.

Before turning to the problem of establishing goals, it is worth noting that arguments about strategy are among the most heated in this area. Three great myths underlie many arguments regarding appropriate strategies for responding to the drug problem, and the use of these myths transcends any particular philosophical approach to the drug problem. Not everyone premises their argument on these myths and few rely on all three. Nevertheless, these myths are common and have had a strong influence on the shape of current arguments.

Myth #1: It is better to do something than to do nothing.

Americans are people of action. It is unthinkable to stand by and do nothing when faced with a pressing social problem. While few would suggest that the current drug problem simply be ignored, this is not to say that any well-intentioned action must do some good, or at the least will do no harm. In fact, policies may have detrimental (though inadvertent) effects. For example, the crackdown on marijuana use by soldiers in Vietnam did lead some

to stop using marijuana, but also led others to begin using heroin, which was easier to conceal. Few would argue that soldiers with a heroin problem are better off than those with a marijuana problem. Whatever policies are adopted, there is always the risk that the policies may exacerbate the problem. In such cases, inaction may well be better than action. A corollary to this myth is the belief that if some action is not solving the problem (or is making it even worse) then even more of the same is needed. If harsh penalties do not reduce the drug problem, then the penalties are simply not harsh enough. Conversely, if reducing penalties leads to no increase in use, then eliminating penalties will also have no impact on use.

Myth #2: *Current drug problems prove the failure of current drug policies.*

It is tempting to cite current drug problems as evidence that past policies have failed. The truth is the level of drug problems under alternative policies is unknown. Some societies, such as that of the Netherlands, have taken a more tolerant stance toward drugs, and have a smaller drug problem. But the culture of the Netherlands differs from that of the United States in a number of ways. Their homicide rate, for example, is nearly one-eighth that of the United States. It is not obvious that successful drug policies in that country would have the same result in the United States. In fact, it is not even clear whether different policies create different patterns of drug use in the Netherlands and the United States. It is just as likely that different patterns of drug use give rise to different policies. The truth is that we have only a vague idea about the extent to which current policies reduce or exacerbate the drug problem.

Myth #3: *When policies fail, their opposites will succeed.*

This is perhaps the most disturbing myth which pervades current thinking about drugs. If drug use escalates in the face of increasingly repressive laws, then the problem is best dealt with by abandoning repressive laws altogether. Similarly, some would argue that if treatment is not effective, then the idea of treatment should be abandoned in favor of harsh punishment. This myth is a natural outgrowth of our compulsion to take some action to deal with the problem. Rather than systematically testing and modifying policies, this myth leads to a frenzied thrashing about and sends mixed messages to the public as policies dramatically shift from one direction to another (as occurred during the Carter years with marijuana).

WHAT CONSTITUTES VICTORY?

Most drugs, at least those which occur in nature, have in one society or another been integrated into the culture in such a way that use is regulated. Put differently, most cultures have found ways to encourage moderate use and to discourage excess. Much of the current problem with drugs derives not only from its illegal status, but also from patterns of excessive consumption. The debate over strategies for dealing with the drug problem must also be a debate over the objectives of the war on drugs. The issue is whether the problem is in the drug's effects, or in the way they are used. That is, whether the goal should be to eliminate drugs (through legal restrictions and punishments) or to change cultural definitions which shape individual patterns of use (through education and treatment). Although the mix of punishment and prevention varies from one country to the next, most countries have policies which include elements of each.

Most would agree that ending the drug problem requires some degree of consensus among citizens, a set of shared values about drugs, drug users, and a sense of obligation by drug-free citizens to both the user and to society. But in the United States, a land known for conspicuous consumption in which success and excess are almost synonymous, the conflicting values which provide the context for national drug policies are particularly striking. This country's historical experience with alcohol is a testimonial to its long-standing resistance to adopting culturally benign patterns of drug use.

The issue of drugs calls forth very deeply held and conflicting basic values in our society, including individualism and free choice, which suggests that people should be able to choose their own poison. These same values elicit strong opposition to mandatory helmet laws for motorcycle riders and explain the hesitation to ban tobacco use despite its known harm and addictive quality. Viewed at this level, drug use is an individual act of free will; if it were not, then legal penalties for use would make no sense.

On the other hand, drug users (particularly addicts) are seen as helpless pawns, who no longer have a will of their own and whose actions affect all of society. They are sick, not bad. Thus drug use, particularly drug addiction, undercuts the principles of individualism and free choice. The particular abhorrence felt in the United States for addiction explains why there is more concern with abstinence by offenders on parole than with the general condition of their life and health. It similarly explains why many addiction treatment programs (such as Narcotics Anonymous) see addiction as the primary problem and other life problems as secondary to or derived from addiction itself. In this country successful drug treatment is synonymous with absti-

nence, but this view is not universal. Successful drug treatment in the Netherlands makes no presumption that the addict will stop using drugs, only that his or her life will get in order.

A third basic value is the belief in hard work and the uneasy tolerance of hedonism. Pleasure for its own sake is simply incompatible with the Protestant ethic that shapes American society. One of the most commonly cited justifications for drug testing employees is that drug use undercuts productivity. Thus, while treatment for addicts is justified because they are dependent and lack free choice, treatment for recreational users is justified because they are not fully productive.

Merging these competing values into a single coherent policy is difficult, and accounts for such inherently inconsistent policies as: (1) legally mandating drug treatment but underfunding treatment programs; (2) utilizing mandatory treatment by giving drug offenders the option of jail or treatment. The idea of legally forcing someone to help themselves is a contradictory concept in a democracy. Mandatory treatment is not possible in the Netherlands, but is a mainstay of American drug policy.

The point of noting these conflicting values is not to argue that the debate over drugs is a debate over whether drugs are good or bad. Most proponents of legalization acknowledge the harm resulting from drugs and many are themselves avowed abstainers. Neither are these conflicting values noted because the problems are merely technical oversights, such as insufficient funding for treatment programs. The problem lies not in these internally inconsistent policies, but in the conflicts in fundamental values which give rise to these policies. Victory in the drug war can never come about because one value "wins" and another "loses." In a war against ourselves even the victor emerges with battle scars. Rather than victory, the term "negotiated settlement" is probably more accurate.

CONCLUSION

This book is about one particular dimension of the drug problem, that aspect related to crime and criminal justice. That the twelve chapters of this book can only deal with a few of the issues raised in the study of drugs and crime attests to the complexity of the subject. This introductory chapter has taken a broader perspective because the study of drugs and crime cannot be fully separated from the broader problem of drugs and drug policy. The criminal justice system has been chosen as the primary force in the war on drugs, and it is likely that it will continue to play the primary role in drug control in the United States. The language of war in drug policy has taken a more literal meaning in recent years, with efforts to include the National