Review Essay

Clinging to Failure: The Rise and Continued Life of U.S. Drug Policy

Kevin F. Ryan

Eva Bertram, Morris Blachman, Kenneth Sharpe, and Peter Andreas, *Drug War Politics: The Price of Denial.* Berkeley: University of California Press, 1996. xiv + 347 pages. $17.95 paper.

Diana R. Gordon, *The Return of the Dangerous Classes: Drug Prohibition and Policy Politics.* New York: Norton, 1994. xi + 316 pages. $29.95 cloth.

Why do public policies persist in the face of failure? How do certain approaches to public problems gain such a dominance over our patterns of thinking that their lack of success only implies the need for more of the same? Why does the policymaking process become so preoccupied with a narrow range of alternatives, so blinded by a narrow range of presuppositions and untested assumptions, that creativity is crushed and realistic alternatives remain unexplored? Why, in short, is the policymaking process so frustratingly impervious to the facts?

These questions may be asked about any number of contemporary public policies, but they are particularly pressing in matters of crime and punishment. Why, for example, in spite of mounting evidence that ever increasing punitiveness does not reduce crime, do policymakers cling to the view that incarceration and its variations (coupled with the death penalty) are the only viable approaches to the "crime problem"?[1] But perhaps the clearest example of the imperviousness of the policy process to research findings is contemporary drug policy, and the attempt

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[1] These questions are asked, and a sketchy attempt at an answer made, by Marc Mauer (1994) and in Donziger (1996).

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to figure out why our failed policy has not long since been jettisoned forms the common theme of these books.

Discussions of contemporary drug policy too often seem to be based on the assumption that public policy exists in a vacuum. Reviews of the successes and failures of what can be called the "prohibition model" rarely detail the ways in which this framework—this mindset, this group of presuppositions, this complex of assumptions and logical links—emerged out of the nonprohibitionist past, nor have they explored the sociocultural roots of its persistence in the face of mounting failure. Rarely have these reviews sought to examine the links between drug policy and social, political, and economic forces. And thus rarely have they been positioned to offer realistic policy alternatives. Assuming that law is, to a great extent, autonomous—not structured by social, economic, and cultural forces—these analyses simply lay out the facts and suggest that a new policy framework replace the failed old one. At work here is a denuded picture of the policymaking process, a picture that assumes policymakers making rational decisions based on a reasonable weighing of costs and benefits unimpeded by either deep-seated cognitive frameworks or sociopolitical forces. Much policy analysis is rooted in the facile assumption that laying out the facts about a policy's failure and/or its negative consequences will produce, almost automatically, reasonable policy changes.

Happily, these books are exceptions to the standard fare. They adopt the view that policy cannot be separated from the social and cultural contexts in which they are born and abide. They attempt a kind of archaelogy of the mindset that feeds our prohibitionist approach to drugs, recognizing that the shape of legal policy can only be understood in the context of the social, political, economic, and cultural forces that gave it birth, sustain it over time, and continue to buttress it today. While the stories told by these books differ somewhat, and while much else remains to be said before we understand what Diana Gordon calls the "hammerlock" of the punitive, prohibition model, together they make a noteworthy contribution to the drug policy debate.

The Failures of Prohibitionism

Specific policies imply or reflect underlying policy "models" that provide a definition of the relevant problem, a set of presumptions about its causes, and a delimited range of solutions. The model underlying drug policy in the United States has been, since at least 1919, what many have called the "prohibition model" and what Bertram and her colleagues call the "punitive paradigm." This approach defines the drug problem as a criminal or moral one and sets as its goal the cessation of drug use through a strategy of criminalization and tough enforcement.

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The strategy focuses on the supply side of the drug market, concentrating public resources on restricting the growth, manufacture, and distribution of drugs, with the aim of forcing prices up and consumption down; the latter aim is also encouraged by increasingly severe penalties for use and possession.

Has the war failed? Few serious students of drug policy contend otherwise, and numerous policy analysts have made the case (see, e.g., Currie 1993; Duke & Gross 1993; Kleiman 1992). *Drug War Politics* provides an adequate summary of the evidence (pp. 9–11). Despite the expenditure of roughly $68 billion on domestic and foreign drug enforcement since 1970—$65 billion since 1981—the drug war has been far from successful. While the number of casual users of drugs has declined since the late 1970s, little of this can be directly attributed to the war on drugs. The decline, in fact, began well before the drug war of the mid-1980s, and may be due more to preventive education, increased emphasis on health, fear of AIDS and other diseases, and demographic trends (particularly the decline in the population most at risk, young people between 16 and 21). Much of the decline of the late 1980s was due to declining levels of marijuana use, surely not the most dangerous drug and not a drug closely linked to the hodge-podge of problems grouped under the rubric of the "drug problem." Most importantly, *no* data indicate a decline in more serious, problematic use, and some data suggest just the opposite: for example, cocaine-related hospital emergencies actually rose 22% between 1988 and 1993 and heroin-related emergencies rose fully 65%. In addition, recent indicators, including the National Household Survey and the Institute for Social Research's high school senior survey, suggest that casual drug use, and marijuana use, is once again rising (see Johnston, O'Malley, & Bachman 1995; National Institute on Drug Abuse 1995). By any measure, the primary goals of the drug war, those of significantly raising prices and lowering availability, have not been met. Indeed, heroin and cocaine prices have declined markedly during the past 15 years while the quality of the product available has increased.

Of course, failure can be, and has been, attributed to any number of reversible causes: poor administration, weak leadership, inadequate resources, insufficient penalties. Were any of these the correct explanation of the lack of success of the drug war, the solution could reasonably be said to be "more of the same": more money, better adminstration, redoubling of effort, increasingly severe penalties, and so forth. And, indeed, this is precisely what unrepentant drug war advocates demand (see, e.g., Bennett, DiIulio, & Walters 1996).

But if at heart the drug war is fatally flawed, no amount of tinkering with leadership, administrative efficiency, funding levels, or penalties can be expected to turn failure into success.

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Bertram and her colleagues want to make just this argument, contending that the punitive paradigm embodies three inherent flaws that make achievement of its goals necessarily impossible: the "profit paradox," the "hydra effect," and the "punish-to-deter fallacy." The "profit paradox" means that whatever success drug enforcement achieves in artificially raising prices only translates into inflated drug profits. These profits, in turn, create a healthy incentive for drug suppliers to remain in the trade and for new suppliers to enter. Profit hunger keeps the supply up, which in turn keeps prices from rising too high, thus undermining the goals of the policy. For example, by keeping prices artificially high—but not high enough to discourage use—law enforcement activity only encourages indigent farmers to continue producing coca and opium poppies, generally their most profitable crops. The lack of enthusiasm shown for drug eradication by foreign governments, rooted in the undeniable short-term economic and political benefits of the drug trade, only exacerbates the situation. Further, as recent events in Mexico illustrate, official corruption, fueled by the enormous profits of the drug trade, is widespread and can reach to the highest levels of government.[2] The drug market is so large and lucrative that, as DEA officials point out, the average drug organization can afford to lose 70–80% of its product and still be profitable. As a well-known RAND Corporation report (Reuter, Crawford, & Cave 1988) demonstrated, even an inconceivable 50% reduction in Latin American cocaine supplies would only raise the street price 3%, since smuggling costs account for less than 5% of the retail price.

Similarly, the profit paradox hamstrings the enforcement effort at the borders and on domestic streets. Gigantic profits permit traffickers to pay enormous sums to those who transport drugs: a cargo pilot, for example, can earn $250,000 for one 250-kilo shipment. And it has long been recognized that the gross profits and low entry barriers involved in domestic drug distribution generate a steady supply of small-time dealers, ready to fill the gaps created by arrests.

The "hydra effect"—what others have referred to as the "push down/pop-up" phenomenon (Nadelmann 1988; Goode 1997)—means that attempts to stamp out drug production and dealing often merely spread the problem, pushing it down in one place only to have it pop up in another. Illicit drugs such as heroin, cocaine, and marijuana are easy to grow, refine, transport, and sell; hence, entry barriers are notably low both here and abroad. Suppliers and producers can economically produce more to offset losses from seizures, and new recruits are always available to take the place of those arrested. When crops are eradicated at the source, farmers can simply replant elsewhere,

[2] See Scott & Marshall (1991) for previous examples in Central America.

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for there is an almost endless supply of suitable places in which to grow these crops; and when they move, they often become less detectable and more resistant to enforcement activity. Further, as the rise of the Cali cartel on the heels of the crackdown on their Medellin rivals reveals, success against one drug organization simply guarantees a larger market share for competitors. In addition, tougher enforcement at the borders merely leads smugglers to open new smuggling routes, develop more sophisticated smuggling techniques, and shift to other, less easily detected products (see Adler 1985). It may also mean the stimulation of the domestic drug industry, as when the reduction of foreign marijuana supplies provided a shot in the arm for marijuana growers in Kentucky, Tennessee, and other states (see Gaines & Potter 1993). Successful enforcement on the streets, in turn, often only results in the rise of new dealers and organizations, the migration of dealing from one spot to another, and greater dealer sophistication.

The war against drug users that accompanies the attempt to reduce supply also suffers from an inherent flaw, what Bertram and her colleagues call the "punish-to-deter fallacy." The idea behind the punishment of users is that severe punishment threatened will deter use in the first place, and severe punishment suffered will deter continued use. The mountain of research on the presumed deterrent effect of punishment, however, has been inconclusive, and when applied to drug use the logic of deterrence is dubious indeed. People use and quit based on a wide variety of motivations and forces. Virtually no evidence suggests that drug users respond like rational consumers seeking to satisfy desires in a free market. Instead, pushed and pulled by social, psychological, situational, perhaps even biological forces, drug users, particularly serious drug users, are highly unlikely to quit due to hypothetical threats of punishment. Worse, serious threats may simply drive users underground and into more dangerous patterns of use.

The failure of the prohibition model involves more than its seeming inability to reach its goals; it also entails a host of unintended negative consequences, convincingly laid out by Bertram et al. (pp. 32–54), that turn failure into disaster. For example, the war on drugs has exacerbated the crime problem not only by making criminals of users—and asking courts and corrections systems to cope with this huge population of clients—but also by giving buyers a powerful incentive to turn to "economic-compulsive" crime (crimes committed to gain drugs or the money to buy them) and by creating an enormous and profitable black market characterized by "trade-based" (or "systemic") violence (Goldstein 1985). In addition, the drug war has undermined health in a variety of ways: by pushing users into unsafe habits, such as needle sharing; by exacerbating the already strong tendency of preg-

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nant drug users to avoid prenatal care, which in turn has led to the spread of fetal health problems; by creating an incentive for suppliers to turn to more profitable, higher potency, and hence more hazardous substances.

One of the most serious social consequences of the drug war, as many commentators have noted, lies in the deepening of racial and class divisions (see, e.g., Bourgois 1996; Currie 1993; Duke & Gross 1993; Lusane 1991). A war against supply and users in the inner city inevitably becomes a war against the poor and ethnic and racial minorities, against those Diana Gordon calls the "dangerous classes."

The evidence of racial discrimination in the drug war, much of which is recited in these books, is persuasive and disturbing. While whites make up the vast majority of regular users of illegal drugs in the United States, blacks are four times more likely to be arrested on drug charges, making up 41% of all those arrested on drug charges in 1991. In some states, such as Florida, New Jersey, Massachusetts, Pennsylvania, Illinois, and Michigan, this disparity rises to 7–9 times the probability of arrest for whites. Gordon points out that in New York City in 1989, 92% of people arrested for drug offenses were African American or Latino. And these differentials cannot be explained by either greater minority use of drugs or minority dominance of the drug trade. While the picture is not altogether clear given the weakness of our data sources, it appears that blacks and Latinos are not significantly more likely to use drugs than are whites (see Gordon, pp. 144–47), nor is participation by blacks and Latinos in the trade greater than that of whites. Despite this, law enforcement attention to the drug trade tends to be concentrated in inner-city, minority neighborhoods, yielding vastly more arrests of minorities than of whites, and fostering the public impression that the drug business is almost entirely the domain of black and Hispanic youth. In addition, black drug defendants receive much longer prison terms, and African Americans make up the vast majority of those facing drug charges in federal courts, where they are subject to stiff mandatory minimum sentences. Further, the artificially high prices created by law enforcement activities put low-income users at a disadvantage, pushing many into theft and other crimes, and into the more visible and dangerous world of shooting galleries. The enormous profits available in the drug trade, though not as high as is sometimes supposed, provide an incentive for desperately poor people to deal, especially in the context of steep economic decline in inner cities (see Bourgois 1995; Wilson 1996).

Finally, the drug war has deeply damaged democratic institutions and shaken democratic values. Many scholars have commented on a growing tendency in the courts to create a "drug war exception" to the Bill of Rights (Duke & Gross 1993; Wisot-

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sky 1990). As Bertram and her colleagues point out, the demand that drugs be stamped out, coupled with the impossibility of achieving such a goal, creates extraordinary pressures on law enforcers to circumvent and transgress constitutional limits. And the courts have been willing to go along with these practices, narrowing constitutional guarantees against unreasonable searches and seizures, condoning warrantless searches and the use of racially charged drug courier profiles, and countenancing draconian civil forfeiture provisions in ever more severe drug laws.

Most notably, as Bertram and her co-authors argue, the drug war is beginning to undermine respect for the criminal justice system. Waging that war has created endless opportunities for corruption and the abuse of power, as continuing scandals in major cities such as Chicago and New York attest. The concomitant loss of citizen confidence in the police at local, state, and even federal levels feeds a broad public cynicism about the criminal justice system in general, a cynicism only amplified by the widespread and accurate perception that the system has been severely twisted and overtaxed by the drug war. Increasingly, concern is being raised about punishments for drug crimes such as possession that far exceed those handed down for rape or robbery, and about prisons that release murderers and rapists to make room for marijuana possessors given long mandatory sentences (see, e.g., Schlosser 1997). By 1990, drug cases comprised 44% of all criminal trials and 50% of all criminal appeals; and the percentage of federal and state prison populations made up of drug offenders had topped the 50% mark in most jurisdictions (61% by 1993 in the federal system) and continues to climb—a 400+% increase that has been the major force behind the explosion of the U.S. prison population (Mauer 1994).

The Origins of the Prohibition Model

If the war on drugs fostered by the stranglehold of the punitive/prohibition model on our policy process has failed, how do we explain its persistence? Why is it that it passes for common sense not only among policymakers but also among their constituents? The answer is complex, and must be sought in the historical roots of the prohibition model and in the "shadow agenda" it served then and continues to serve today.

Most analyses of drug policy in the United States make a fundamental mistake: They content themselves with a mere recitation of events in the history of prohibition without making a serious attempt to interpret those events.[3] But a series of events can

[3] David Musto's *The American Disease* (1987) is a noteworthy but rare exception. For more specialized studies see Courtwright 1982 (opiates); Bonnie & Whitebread 1974 (marijuana); and Himmelstein 1983 (marijuana). The literature on alcohol prohibition is much fuller; see, e.g., Gusfield 1963; Levine 1985; and Rumbarger 1989.

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never explain the construction of common sense. The "givenness" of the drug war model is the product of a process that involved more than merely persons, dates, and laws passed; merely cataloguing these details takes us nowhere. Understanding the process requires analysis of *why* history unfolded as it did—why certain events occurred when they did, why they involved the people they did, and why alternatives were progressively eased out of the picture.

Unfortunately, though both books point toward the importance of such an analysis, neither successfully provides one. Gordon focuses much more on policy politics in the present, and her references to the past fail to examine thoroughly the comings and goings of the "dangerous classes" as a theme behind the formulation of drug policy. Indeed, Gordon fails to demonstrate convincingly her fundamental thesis about the "return" of these classes because she does not effectively make clear that they ever dropped out of the policymaking process. At the very least, a full understanding of the ways in which fear of the "dangerous classes" lurks behind policy can only be had by exploring how that very fear has roots in the nativism that drove much of the policymaking of the Progressive era, including early drug policy (see Higham 1975).[4] Gordon does not take up this task.

The authors of *Drug War Politics* are much more cognizant of the importance of understanding the historical record before conclusions can be drawn about the persistence of certain policies. Still, they tend to recite the events rather than explain them, and the reader is left at the end with a feeling that certain orientations in drug policy are well nigh inevitable.

The chain of events is a familiar one. By 1900 there was increasing concern about the extent and seriousness of "narcotic" use (broadly defined to include cocaine as well as opiates) in the United States, particularly in regard to the widespread use of patent medicines, many of which contained heroin or cocaine. During the first decade of the century, the United States became the primary exponent of increased international control over the narcotic traffic, pushing for international conferences and international agreements to regulate the flow of these "deadly" substances (Ryan 1998). Almost as an afterthought, Congress, realizing that the United States had no national regulation of the narcotics trade, passed the Harrison Narcotics Act in 1914. Based on the taxing power granted Congress by the Constitution, the Harrison Act provided for increased regulation of the distribution of opiates and cocaine, requiring a physician's prescription and the payment of a tax.

[4] Drug policy has from the beginning been driven, in part, by a deep-seated nativist fear about the moral, political, social, and economic implications of an ever larger, polyglot, urban mass of people whose skin color or ethnic heritage differs from that of the dominant group.

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As Bertram et al. note, the drafters of the Harrison Act viewed it as a tax and regulatory law, not a prohibition law. Almost immediately, however, the Treasury Department's Bureau of Narcotics, under the leadership of Levi Nutt, began prosecuting doctors who gave maintenance doses of narcotics to addicts. Initially, the U.S. Supreme Court resisted this radical extension of the act (*United States v. Jin Fuey Moy* 1916), but in 1919, in *Webb v. United States,* the Court reversed course, holding that the provision of narcotics to addicts was not proper medical practice. Within a few years, the practice of giving maintenance doses of narcotics was all but eliminated in the United States, and the Harrison Act had been redefined as a prohibition law. Despite a second reversal by the Court in 1925 (*Linder v. United States*), by the end of the 1920s the punitive paradigm had become firmly ensconsed in the public policy consciousness.

What forces underlay these events? Why did the United States turn punitive when other nations, such as England, defined the problem and its solution more in medical than in criminal terms? Bertram and her colleagues, I believe, point in the right direction by isolating three factors that help explain how the Harrison Act, and drug policy in general, became redefined in prohibitionist terms. First, government agents joined forces with the antivice crusaders who had, for years, been seeking criminalization of drug distribution and use. There can be little question that constant pressure by the Treasury Department, which insisted on interpreting the act as forbidding maintenance doses of narcotics to addicts, ultimately contributed to the shift in public and legal opinion on the meaning of the act. The alliance of antivice crusaders, Treasury agents, and antidrug organizations, all of whom saw narcotics as "evil" and "dope doctors" as reprehensible, helped transform public attitudes toward addicts.

We must be careful, however, not to overemphasize the power and influence of the federal law enforcement bureaucracy at the time. Indeed, that bureaucracy had barely come into existence and had hardly achieved the status in government deliberations it came to possess by the 1930s. Still, the activities of the Treasury Department hint at an important feature of the period: the professionalization and concomitant staking out of social problem territory by law enforcers.

The success of law enforcement's claim to "own" (Spector & Kitsuse 1987) the drug problem depended importantly on a second factor mentioned by Bertram and her colleagues. As they point out, the battle over the proper interpretation of the Harrison Act exposed and exacerbated divisions and weaknesses in the medical profession. The medical profession was not then what it has become today—a powerful force, viewed with respect and sometimes awe by the general population, and understood to hold the key to very many social ills. Those in health care occupa-

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tions were also professionalizing during this period, and the process was pervaded by conflict and struggle (Starr 1982). Ill-equipped and disinclined to wield the authority over the nation's addicts handed to it by the Harrison Act, the medical community (or at least the leading forces in it) sought to define itself in a way that allied it with the more prosperous classes in society and distanced it from the care of lower-class addicts. Support for a medical-treatment model of coping with drug problems, never widespread or well organized in the profession, slowly withered away. Its death knell was sounded with the demise of public drug clinics, most of which were shut down by 1921.

But the machinations of these two occupational groups, each intent on advancing its own interests, one willingly giving up control over a social problem the other wants to claim as its own, cannot by themselves explain the emergence of prohibitionist drug policy in the early decades of the 20th century. That policy was dependent on a number of presuppositions, none of which were commonly held at the end of the 1890s. First, drug use and abuse, and the drug distribution that fed use, had to be seen as a serious social problem. Second, government action, particularly federal government action, had to be seen as the appropriate response. Third, the public had to be willing to accept invasion of spheres of activity traditionally under the control of individuals or their local communities. By the 1920s each of these presuppositions were in place. The fundamental task of any explication of the origins of prohibitionist drug policy is to explain the emergence of these presuppositions.

Bertram et al. help us begin to understand these shifts in public consciousness by mentioning (but not discussing in any detail) the increasingly fearful and vengeful social context of the late 1910s. The end of World War I brought in its wake widespread fear of immigrants and foreign influences. This was the period of a growing morals movement, feeding on and nourishing elite and popular concern about the morals of primarily Catholic immigrant city dwellers, a movement that came to a head in 1919 in a "transition crisis"—a paroxysm of attacks on the lifestyles and livelihoods of urban populations (Ryan & Granfield 1997). The period saw the peak of the so-called Red Light abatement movement, aimed at cleaning up the perceived immoralities of immigrant communities. Perhaps more significantly for our purposes, alcohol Prohibition became national policy in 1919—as a kind of last gasp of the old Protestant ascendancy (Gusfield 1963) and a fresh attempt at control of the working class by newly ascendent urban industrialists (Levine 1985; Rumbarger 1989). As I have already suggested, these movements and shifts in public policy had deep roots in an increasingly virulent nativism that also produced the Red Scare of 1919, the infamous Palmer Raids that led to the deportation of many "ques-

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tionable" persons, and the beginnings of serious governmental concern with organized crime (see Higham 1975; Murray 1955; Nelli 1976).

The forces at work in this period should be examined much more thoroughly than has hitherto been done. Disappointingly, neither of these books takes on the task of presenting the wider picture. Much that emerged can be understood as a reaction to a pervasive fear that old orders, old forms, old moral beliefs were under attack. The fear, the morals movements it spawned, and the transition crisis of 1919 underlay the rise of punitive drug policy. For drug use could be, and increasingly was, associated with the very populations that so unsettled the old order: immigrants, foreigners, workers, city dwellers.

Furthermore, neither book helps us understand how it could come to be thought that vigorous and invasive federal government action was required to address the drug problem. The beginnings of national drug policy must be understood in the context of the transformation of public views about the role of government that occurred during the Progressive era. What has been called the "Progressive impulse" (Chambers 1992) was marked by a recognition of a wide range of new social problems stemming from industrialization and urbanization, a desire to achieve social justice through governmental action, and a willingness to achieve it through ever more thorough social control. It is at the door of this Progressive orientation that we must lay the origins of punitive drug policy.

The Persistence of Punitive Drug Policy

Another largely unanswered question in these books, and indeed in the literature at large, relates to the persistence of the prohibition model in the decades following 1920. What social forces undergirded this persistence? How can we explain the failure to question a policy that experience should have called into question? Gordon is virtually silent on these matters. Bertram and her colleagues merely recite the names and events of the period, making no serious attempt to analyze the factors underlying the survival, indeed the increasing vigor, of the punitive paradigm in the years between 1920 and the mid-1960s. When the aim is to show how the *public* came to look at drugs a particular way, and how alternative understandings were either squashed or never dreamed of, mere recitation of the activities of the Bureau of Narcotics and Congress does not go far enough.

Certainly a large part of the explanation for the persistence of prohibitionism relates to the continuing vitality of the very factors that spawned it: the Progressive impulse, nativism, moralism, and the self-interests of physicians and law enforcers. Part of the explanation, too, lies in the assumed connection between drugs

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and crime, a link that had long been asserted as a piece of the law enforcers' claim of ownership of the drug problem. The drugs-crime connection lay at the heart of the case for federal marijuana prohibition, as that case was presented by Harry Anslinger of the Bureau of Narcotics during the 1930s. *Drug War Politics* briefly discusses this campaign, showing how in the fearful and moralistic mood of the day, little opposition emerged to the criminalization of marijuana; although several medical experts called into question the government's shrill demonization of the drug, very few others spoke out. Indeed, the government discouraged opposition by blocking crucial testimony and disparaging critics. Damning evidence was ignored in the strain to defend the many faulty claims propagated by prohibitionists and the media.

Whatever the reasons, the punitive mindset thrived. The postwar period was characterized by an escalation in antidrug hype, curiously at a time when drug use was quite low. Anslinger's Bureau of Narcotics tied the threat of drugs to the threat of communism, a variation on the nativist themes of an earlier day. Whenever drug use continued or grew worse, whenever the social ills associated with drug use resisted solution, policymakers simply called for more of the same.

Both books make important contributions to our understanding of developments in drug policy from the 1960s to the mid-1990s. Bertram et al. contend that the punitive paradigm faced two major challenges in the 1960s and 1970s: the "treatment challenge" and the marijuana legalization movement. Treatment advocates in the 1960s called into question the central assumption of the punitive approach that punishment is the best way to discourage drug use. But the challenge fell short of dislodging the dominant mindset, as treatment came to be viewed by prohibitionists, including President Nixon, as a useful adjunct to punishment. The cooptation of treatment was facilitated by the failure of treatment advocates to attack the supply-side orientation of drug policy. Starting from a premise of individual responsibility, treatment advocates only argued that treatment was more effective and humane than punishment and asked that some portion of federal drug money go to treatment and preventive education programs. "In the end, a potentially transformative political struggle over the nature of drug addiction instead became a pragmatic conflict over how funds were to be allocated" (Bertram et al., p. 93).

The late 1960s and early 1970s also saw an assault on marijuana legislation, as many states passed liberal possession laws. As Bertram and her colleagues point out, the roots of the opposition to strict marijuana laws had several sources: the tradition of tolerance of differences; a kind of pragmatism that pointed to the ineffectiveness and harmfulness of marijuana laws; and a middle-class counterculture that embraced a freer lifestyle and

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the pursuit of immediate gratification. Scientists, health officials, and professional organizations all presented evidence that marijuana was not addictive and that harsh penalties were both unjust and ineffective. Lawmakers took notice because of the experience of millions of Americans with marijuana and because of the social composition of users and their families.

Still, throughout this period prohibitionist forces never lost control of enforcement agencies and the legal system. By the end of the 1970s, the rise of the Moral Majority—moralistic conservative groups who saw legalizers as part of a larger, leftist, countercultural assault on American values—brought to the fore a vocal group of influential people who wanted to rearm America, morally and militarily, at home and abroad. These people saw drug use as a criminal contagion, a threat to traditional family and political values. The shift in moral climate indicated by the rise of this sort of thinking dealt the decriminalization movement a severe blow, making it a hostage of an engulfing culture war still being waged today (see Gitlin 1995; Hunter 1991).

Anyway, as Bertram and her colleagues point out, the view embedded in the punitive paradigm that drugs are both dangerous and morally wrong had been so deeply engrained in the public mind by decades of official reinforcement that it was difficult for many to embrace the notions of drug tolerance implicit in the decriminalization movement. The movement never forged sturdy links to state or local bureaucracies, nor did it develop sustained support in the Democratic party. It also failed to dismantle the drug enforcement apparatus or to excise the embedded antimarijuana orientations inside those institutions.

Drug War Politics carefully and persuasively describes how the punitive paradigm sets the stage for a "politics of denial," shaping the interests and interpretations of those who craft, vote on, and implement policy. The political factors at work in bureaucracy, Presidency, and Congress must be understood in the context of the paradigm. The paradigm locks the political sights of government officials on suppressing drug use by waging wars on supply and users. It leads them to resort to threats and coercion, creates powerful incentives to deny the flaws in the drug war approach, and makes it rational for them to respond to failure with escalation rather than reevaluation.

The punitive paradigm shapes institutional processes in three ways. First, it filters out disturbing evidence and narrows public debate. Negative evidence is deflected in public discussion by the images, symbols, and myths of the paradigm. For example, interdiction, even if it does not really slow the flow of drugs into the country, has taken on a symbolic importance—it has become an end in itself. And when criticisms are raised, the common response is to ignore, dismiss, or attack the evidence or to malign

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those who present it. Often, evidence of failure is met with the "can-do response," the claim that political will is all that is needed and that force will ultimately work if only enough is used. The result is that neither the ends nor the means of drug policy are open for debate.

Second, the paradigm has helped to create political traps for moderates. Out-toughing one's opponent becomes logical because of the widespread acceptance of the prohibitionist mindset by elected officials and their constituents. Moderates find themselves trapped by punitive assumptions and find that they must accept law enforcement as a demand-side strategy. In the end, the partisan battles over drug policy during the 1980s came down to a marginal struggle over the means of the drug war rather than its ends.

Third, the paradigm distorts treatment and prevention. Public support for these alternative strategies is undermined by images and beliefs embodied in the paradigm: drug use (usually equated with abuse) is a personal, individual problem, a moral weakness, and abstinence is the goal with punishment as the most effective way to achieve it. The acceptance of these assumptions hamstrings treatment advocates. The persistence of the punitive paradigm ultimately has other negative effects on treatment and prevention: it discourages those who need treatment from seeking it; it undermines efforts to stop the spread of drug-related diseases such as AIDS; it thwarts programs that could alleviate suffering and minimize crime, such as methadone maintenance; and it frustrates preventive education programs that might otherwise help reduce the harms caused by drug use.

Where Bertram and her colleagues give us a political, or institutional, explanation of the persistence of failed policy, Diana Gordon attempts to show how that policy furthers a deeper cultural agenda. Failed policy, she contends, survives because it serves interests other than the stated goal of reducing dangerous drug use. Drug war politics find their roots in a "shadow agenda"—an agglomeration of opportunities, fears, and needs that has created a consensus about the proper parameters of drug control, to the detriment of rational cost-benefit analysis of alternative policies. The shadow agenda, deeply colored by a host of cultural and economic fears, finds its focus in the "dangerous classes"—those segments of American society perceived as unruly and threatening to the social order. Broadly, the dangerous classes consist of racial and ethnic minorities, authority-flouting youth, recent immigrants, and permissive liberals. Drug users personify the dangerous classes, as do street-gang members, welfare mothers, and critical, nonconservative intellectuals.

Through a series of case studies of local, state, and federal policy debates, Gordon argues that the shadow agenda triggers policy discussions that militate against rational appraisal of alter-

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native drug policies and distract attention from the structural problems of contemporary society. The shadow agenda, entailing the control and regimentation of the dangerous classes, functions as a tool for staking economic and political claims. For example, financially strapped cities and states see drug control as a way to compete for scarce resources. Politicians at all levels of government find a costless way of scoring points with the public by manipulating the issue of drug control. Hence, tough drug laws receive strong bipartisan support. For example, Gordon shows how a congressional consensus developed for giving the death penalty to "drug kingpins" even where no murder is committed. Such "kingpins" make a perfect target for righteous policymaking, for while (or because?) kingpins are rarely cornered, substantial political mileage can be gained from taking a tough stand against them. Similar motivations lie behind the policies examined in Gordon's other case studies: the adoption and revision of a Michigan law mandating life imprisonment without parole for people convicted of possession of more than 650 grams of opiates or cocaine; the recriminalization of marijuana in Alaska by citizen initiative, after 15 years of decriminalization; the passage of an antidrug sales tax in Kansas City during the era of taxpayers' revolts; and the adoption of a Seattle ordinance making it illegal to loiter with the intent to engage in an illegal drug transaction.

Undoubtedly, short-term political gain and other sorts of self-interest can be spotted behind these political battles. But how strong is the case for Gordon's claim that a shadow agenda underlies such policymaking? The case is a difficult one to make, for the very hiddenness of the agenda means that it is rarely, if ever, explicitly stated. No smoking gun awaits discovery in official policy statements, preambles, records of committee hearings, or even survey or interview data. The shadow agenda remains a sort of ghost in the machine, something in which we may or may not believe, but something for which no solid evidence can be mustered. Gordon's claim is, in the classic sense, nonfalsifiable. The claim that a nefarious shadow agenda lurks behind drug policy may be provocative, but it is ultimately undersupported, for it relies too much on the reader's willingness to believe in the unseen.

Moreover, the ontological status of the shadow agenda is never entirely clear. Quite often Gordon seems to suggest that specific legislators, citizens, parents, and administrators are directly and consciously motivated by the wish to control the dangerous classes. She has no evidence for such a claim, however, and, in any event, it is unlikely to be the case. She is at her most persuasive not when she claims to establish motivations but when she appears to suggest a cultural background, a set of interpretive blinders, a policy mindset that strikes most as the only way to

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look at things. In other words, the more Gordon's argument resembles that of Bertram and her colleagues, the more convincing she is.

Where Do We Go from Here?

The power of the drug war paradigm means that discussion of real alternatives rarely occurs. Indeed, until there is a fundamental change in the way the drug problem is framed, until it becomes rational for policymakers and the public to think and act differently, the punitive approach cannot but persist and the cycle of failure continue. The more pervasive we find the prohibitionist mindset to be, in other words, the more pessimistic we must be concerning the possibilities of policy change.

Gordon is indeed pessimistic. Referring to her case studies, she concludes (p. 227):

> Despite the virtually nonexistent return on taxpayers' investment in drug control in these cases, in none of them is there likely to be a clear repudiation of existing policy or the adoption of a new policy direction. People have simply learned to live with outcomes that, in terms of relief from the condition they publicly identified as problematic, are unsatisfactory.[5]

She sees little reason to expect significant change in policy or even to expect "active or visible efforts to rescind" that policy. Any changes are doomed to be minor and superficial. Her pessimism extends to the conclusion that even reform of marijuana laws is unlikely. Gordon clearly did not foresee the dramatic recent developments in California and Arizona, and while it borders on being unfair to criticize a scholar for failing to predict the future, the temptation to do so is strong where the denial of the possibility of change is so categorical.

Despite her pessimism, Gordon cannot resist the opportunity to indicate the direction in which she would like to see policy move. Building on her examination of policy developments in Europe during recent years, she favors a "harm minimization" approach, such as that pursued in The Netherlands, in which a much higher priority is given to public health concerns and prohibition has been "de-escalated." Still, such a shift is unlikely, she concludes, as long as we fail to "modify our widespread moral antagonism to the mind-altering experience" (p. 234)—and, consistently, she holds out little hope that this modification is forthcoming.

Bertram and her colleagues, on the other hand, see a flickering light of hope, despite the persusiveness with which they lay

[5] Ironically, as she points out (p. 227), if we assume that the "real" aim of prohibitionist policy has been to carry out the shadow agenda, then that policy has been a noteworthy success "as a vehicle for the dangerous classes mentality, a sparkplug of political opportunism, a banner to rally resources."

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out the politics of denial. Like Gordon, however, they reject legalization of drugs as a realistic alternative. They chide legalizers with a failure to take seriously the real suffering caused by drug abuse and addiction. Legalizers, they argue, tend to be too sanguine about the immediate results of legalization—in particular, they fail to appreciate that legalization is likely to increase use, at least in the short term, and hence increase levels of drug dependence, abuse, and addiction.[6] In addition, they contend that the legalization approach is too rooted in a set of individualist assumptions most Americans find discomforting, especially in an era characterized by an increased emphasis on family and community. Concluding, perhaps too quickly, that these flaws make legalization unacceptable to the American public, Bertram and her colleagues reject legalization as a viable option.

The persuasiveness of this analysis is diminished, however, by the authors' failure to distinguish among the varieties of legalization proposals.[7] As Erich Goode (1997) has demonstrated, "legalization" tends to be a catch-all category, subsuming proposals ranging from "legalization" per se (the adoption of a state licensing system similar to what now prevails for alcohol and tobacco) to "decriminalization" (the complete or partial removal of state control). More important, "legalization" of some sort is surely involved in proposals based on a medical model, such as the very approach recommended by Bertram and her colleagues, and in the harm reduction policies increasingly being adopted in Europe (and touted by Gordon). Inasmuch as all alternatives to prohibition entail legalization, anyone calling for the end of the punitive paradigm cannot logically reject "legalization" in general.

Bertram and her colleagues also reject what they call the "medical model," which defines drug abuse as an individual problem, requiring medical treatment aimed at curing what is perceived to be an "illness." Again, however, little attention is devoted to this alternative, one that receives much positive attention from those convinced that treatment is preferable to punishment, and one receiving increasing support in health care professions. The authors simply point to the absence of any medical cure for drug abuse and dependence, concluding that this indicates the limitations in scope and utility of the medical model.

Instead, nearly a third of *Drug War Politics* is devoted to spelling out the dimensions of what the authors call the "public health paradigm" for thinking about drug problems. This alter-

[6] Similar arguments are developed at length in a new book by Erich Goode (1997).

[7] Further, Bertram et al. fail to recognize the enormous differences, fraught with political and social consequences, between legalization proposals offered by those Ethan Nadelmann (1992) calls "progressive legalizers" and free-market "conservative libertarians" (see Goode 1997).

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native policy framework, as the authors elaborate it, has three unique characteristics. First, it sees drug use as a public, not an individual, problem—one that may be caused and exacerbated by social conditions over which individuals have limited control and one that has social consequences in terms of individual well-being, the social and economic functioning of users, and public safety. Second, the public health approach addresses health problems by focusing on the social environment. Third, this approach is concerned with prevention as well as treatment—and prevention requires attention to the environmental conditions of drug use. The central aim of the public health paradigm is to prevent drug abuse and addiction and, should they occur, heal those who suffer from them and minimize the harms they cause to themselves and others. While these ideas may sound radical to American ears, a similar approach, under the name of harm minimization, has come to guide the policies of a number of European nations, as Diana Gordon describes in some detail (see also Nadelmann 1995).

Bertram and her colleagues contend that no policy paradigm can take root unless it finds fertile soil in already-existing patterns of thought. In an effort to demonstrate the consistency of the public health mindset with important strands of American thought, they chart the rise and fall of the public health movement in the early decades of this century. Emerging as a response to the rapid industrialization and urbanization of the late 19th century, the public health movement was ultimately marginalized as the health care occupations underwent professionalization in the 1920s and 1930s. Indeed, the public health ideology flowed out of the same Progressive impulse that produced, among other things, federal drug policy (though the authors fail to make this point), and succumbed to the same shifts in occupational power that led physicians to distance themselves from the drug problem. Quite correctly, the authors see the defeat of the public health orientation—spearheaded by the AMA, an organization notably individualist, antistatist, and antisocialist—as a time of lost opportunities. They describe the gradual reemergence of a public health focus since the late 1940s, particularly in the response to AIDS in the 1980s.

What would a public health approach to drugs look like? Its primary goals, the authors contend, would be to discourage any use of the most dangerous drugs, to prevent casual use from developing into abuse or addiction, to encourage addicts to use less dangerous forms of certain drugs, to teach people who use drugs how to prevent or minimize health hazards to self and others, and to design treatment strategies that help people lessen, manage, or end their drug use while minimizing the harm they cause to others. Instead of using treatment and prevention as weapons in a fight to stop all drug use, punish users, and relieve pressure

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on overcrowded prisons, the public health model would reorient treatment and prevention to promote public health, broadly conceived.

Most strikingly, under a public health approach law enforcement would no longer be the keystone of drug policy but merely an adjunct to generally nonpunitive policy. Laws that undermine public health goals (such as those that permit jailing of pregnant addicts, thereby discouraging these women from seeking prenatal care) would have no place. Law enforcement strategies that encourage harmful behaviors such as needle sharing would be eliminated. Use and possession would be decriminalized, to be replaced by government regulation of the drug market through controls on availability, purity, and price. The role of the criminal law would be restricted to the prohibition of dangerous and harmful action, such as driving under the influence or committing crimes, and the prohibition of black market activities. Treatment would be incorporated into punishment, so that those caught in the criminal justice system could receive the treatment they need to break the drug use–crime cycle. In short, the move to a public health model would dramatically reduce the role of the criminal justice system in drug policy.

Can such a transformation of policy happen here? Bertram and her colleagues, as I indicated above, are much less pessimistic about the possibility of change than is Gordon. They point to the growing corps of drug war defectors (once avid drug warriors who now reject the prohibition model) and to challenges from the treatment community, which is growing restive in the face of the persistent failure of the punitive approach. They point to subtle changes in local communities and to many in the criminal justice system who are reenvisioning the system and its role in coping with drugs. Had their book been written later than it was, they could have pointed to the surprising events in Arizona and California where popular and well-funded movements to legalize marijuana and other drugs have challenged the supremacy of the drug war paradigm.

But as the authors of both these books realize, significant change in drug policy will not occur in the absence of major paradigmatic shifts. Somehow, the politics of denial must be counteracted by the elaboration, public espousal, and broad acceptance of an alternative vision about drugs, drug users, and drug problems. Mindset changes of this magnitude, however, cannot be the product of armchair theorizing and will not be generated by think tanks. Change must emerge out of politics, where citizens speak, act, and pressure their elected representatives to end the politics of denial and adopt a "politics of reason, care, and collective responsibility" (Bertram et al., p. 263). And for that to occur, the new mindset must "resonate"—it must find its roots in an accessible American tradition and accepted Ameri-

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can values. The great strength of the public health model, according to Bertram and her colleagues, is that it is deeply rooted in our past and in some of our most cherished values. While they are less clear about exactly what these values are than I would have wished, I think they make a good case for the virtues and viability of the public health paradigm.

In her penultimate chapter, Gordon contrasts European approaches to drug control with those in the United States, pointing out that drug policy does not serve as a lightning rod for fear and hostility about dangerous classes to the same degree in Europe that it does here. This is undoubtedly true. What Gordon is unable to explain is why this should be so. For surely it is not because there is no fear of dangerous classes in Europe; indeed, as the resurgent nationalism and anti-immigrant violence that feature so prominently in contemporary Europe indicate, these societies have a vibrant worry about the dangerous classes. The answer must lie in some deeper symbolic role played by drugs in the American consciousness. If drugs did not have such a role, historically grafted on our vision of the social world, politicians could not make the banal, self-interested use of the drug issue that these books describe. It is the great achievement of these books that they explore in more detail than has heretofore been done the underlying political motivations and symbolic functions of drug war politics. It is their greatest shortcoming that neither is able to develop fully enough a picture of how drugs came to be such a valuable tool in the political game, for as the case of Europe demonstrates, it is not inevitable that they be so.

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