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GLASNOST IN US DRUG POLICY? CLINTON CONSTRAINED

Parts of this article were presented as a lecture at the 121st Annual Meeting of the American Public Health Association, San Francisco, 27 October 1993.

Professor Craig Reinerman analyses the political opening provided by the growing failures of the US drug war and the proliferation of progressive alternatives. He finds some new possibilities for more humane and effective drug policies, but also constraints that have kept the Clinton administration chained to the conservative policies of the past.

THE OPENING

Compared with the results so far achieved in the field of drug control, Don Quixote's attack on the wind mills appears to have been an ingeniously conceived and brilliantly executed major military operation that led to a victory with long-ranging tactical and strategic consequences.

Svante Z.M. Travenius (1993)

After nearly a decade of the most repressive drug prohibition in US history, there is a growing chorus of critics from across the political spectrum who point to the fundamental failures of the drug war. More than \$100 billion has been spent since 1986, the bulk of it on police and prisons. The US prison population has more than doubled in the past decade, thanks mostly to small-time drug arrests. FBI reports show more than half a million marijuana arrests in 1992 alone. We now have the highest rate of imprisonment in the world, double Britain's, triple Germany's and five times the rate of Sweden, France and Denmark (Currie, 1985). Middle-class drug use had been waning of its own accord well before the Reagan-Bush drug war was declared. But despite arresting and imprisoning millions of citizens, serious drug problems persist, especially in our inner cities. So much for deterring demand.

Even though black community leaders often led the charge against drug use, the drug war's racist consequences are now apparent. Our prisons are not just bulging, they are bulging with

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mostly impoverished ethnic minorities. In their zeal to score political points with tougher drug laws, politicians demonised crack as the most grave threat humankind had ever seen (Reinerman and Levine, 1989). One result was a rash of new mandatory minimum sentencing laws, some of which specified that possession of a mere 5 grams of crack must be punished by a 5-year minimum sentence, whereas one must be convicted of possessing 100 times that amount of cocaine powder to get a 5 year minimum. The assumption underneath this legal distinction is that crack is fundamentally more dangerous than other forms of cocaine. Although this premise is pharmacologically fictitious, its consequences have been tragically real and profoundly racist . For most black cocaine use takes the form of crack, whereas most white cocaine users ingest it in powder form (National Institute of Drug Abuse,1993) .

Thus, the drug war has incarcerated more African Americans, for longer periods, than at any time since the Civil War. Such racially skewed sentencing builds on the biases that stem from the more visible street corner sales and more intense police surveillance in inner-city neighbourhoods, the lack of quality legal representation for the poor and the institutionalised racism found in courts and juries. The result has been not so much a war on drugs as a war on people of colour who use drugs. More and more people are speaking out against this, and US drug policy enjoys less and less legitimacy as a result. Massive interdiction has fared no better than massive imprisonment. In 1981, a single ton of cocaine was often reported as a world-class seizure worthy of front page headlines. By 1989,44 tons was not even a record (Massing,1993). Indeed, cocaine and heroin appear to be more available, more pure and less expensive than they were a decade ago. So much for supply reduction.

On top of these failures on the demand and supply fronts, this epidemic of drug law enforcement has virtually choked the criminal justice system at every level. Instead of drug control serving as a strategy of crime control, which is how the drug warriors sold it to the public, drug control has become a fetter on crime control. Police who might be walking beats and keeping streets safer are ensnared in drug dragnets, after which thousands of additional patrol hours get diverted into processing paperwork. Many violent criminals are avoiding arrest altogether or are being released from prison early to create room for non-violent drug offenders. And, of course, the bulk of the violence associated with illicit drugs continues because criminalisation keeps drug sales highly profitable and utterly unregulated (Goldstein et al.,1989) .

All this has not been lost on criminal justice functionaries. Dozens of prominent federal and state judges have come to resist the new mandatory minimum sentencing laws as a failed and unjust policy which wastes expensive prison cells. Several such judges are openly protesting by refusing to take any drug cases, and a few have resigned rather than apply the Draconian drug laws (Treater,1993a) . A number of big-city police chiefs have spoken out against repressive criminalisation and in favour of alternative drug policies. Even the US Sentencing Commission

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has officially criticised the most basic premise of the drug war- the notion that more punishment is the solution to America's drug problems.

Moreover, we have seen the growth of a 'respectable opposition', who advocate a fundamental . shifting drug policy. In 1987, Kurt Schmoke, a former prosecutor who had just been elected mayor of the city of Baltimore, exclaimed the costly and repressive failure of America's drug policy and made a courageous public appeal for a real debate on decriminalisation. His advisers told him it was political suicide, but he never let up and won re-election anyway. Since then, a growing array of scientists, scholars, judges, police chiefs and even other politicians have begun to play the proverbial small boys pointing to the naked emperor of a bankrupt drug policy.

These opponents are not, however, merely the 'usual suspects' on the libertarian left. They include conservatives like publisher William F. Buckley, Jr, Nobel prize-winning economist Milton Friedman, former Reagan administration Secretary of State George Schultz, the Mayor of San Francisco, Frank Jordan, a former Police Chief, and several Republican jurists. Trenchant critiques of the drug war have been published in prestigious periodicals such as Science, Harper's, The Wall Street Journal, American Heritage, Daedalus, The Public Interest, The Economist, The New York Times, and most recently The New England Journal of Medicine. The American Bar Association, the American Medical Association and the American Public Health Association have all officially suggested that it is time to re-think the drug war. Indeed, the opposition to current US drug policy has grown sufficiently large to have institutional bases such as the Drug Policy Foundation in Washington DC, which has attracted thousands of members and millions of dollars in support.

A few years ago, Bush administration 'Drug Czar' William Bennett publicly denounced critics of the drug war as traitorous and stupid. By 1994, too many thoughtful, prominent people have raised too many important questions for moral ideologues to be so dismissive. Even the media, who had for a decade enthusiastically enlisted as a kind of propaganda corps in the drug war (Reeves and Campbell, 1994), have discovered a new news theme: 'The drug war has cost a fortune, filled the prisons, and has not worked.'

Perhaps the most compelling domestic pressure towards drug policy reform has come from the HIV/AIDS epidemic. Injecting drug users and their sexual partners and children now constitute the largest and fastest growing epidemiological category of new AIDS cases in the USA. American leaders initially resisted needle exchange on the grounds that it would appear to be putting the 'government stamp of approval' on injecting drug use and thus 'sending the wrong message'. However, as the death toll mounted and as evidence of the life-saving efficacy of needle exchange accumulated, police chiefs, public health officials and mayors developed ad

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hoc policies that allowed it.

Now even the National Institute on Drug Abuse has funded research on needle-exchange programmes, and scientists are reporting what community health outreach workers reported all along. Needle exchange substantially reduces needle sharing and the spread of HIV, gets contaminated needles off the streets and out of parks, brings injecting drug users into contact with treatment and service agencies, spreads safe injecting and safe sex information among an otherwise hard-to-reach population, and does not increase drug use (e.g. Des Jarlais and Freidman, 1992; Centers For Disease Control, 1993; Watters et al., 1994). In the face of the AIDS epidemic and the accumulating evidence supporting needle exchange, it has become more difficult for US policy makers to effectively sentence people to death in the name of a moral ideology.

The final set of ingredients in what I have called drug policy glasnost come from outside the USA. In the 1980s, while the USA grew more virulently ideological in its drug policy, other industrial democracies were getting more practical. Their incremental successes relative to our continued failures seem to have pushed drug policy discourse in a different direction. For example, the harm-reduction movement has grown outward from Amsterdam and Liverpool to encompass more and more of European drug policy. Australia and Canada, too, have taken significant steps away from American-style drug policies towards harm reduction and public health models.

Something of a breakthrough occurred in 1990 when the mayors of several European cities formed a trans-governmental alliance called the European Cities on Drug Policy (ECDP). These mayors drafted and signed 'The Frankfurt Resolution', a bold policy declaration made in protest against the local effects of rigid national drug prohibitions. Although national legislators have long used drug laws to posture for partisan advantage, they rarely have to live with the con

sequences. In Frankfurt, local officials who actually had the responsibility of running cities exclaimed that they would henceforth find their own ways of dealing with drug problems (e.g. de facto decriminalisation, needle exchange, alliances between police and treatment and social service agencies, etc.). Within 3 years, the number of European city governments who joined the ECDP had more than doubled, and its meeting in 1993 drew representatives from 58 cities in 14 different countries (ECDP, 1993; Nadelmann et al., 1994). In November 1993, the Drug Policy Foundation in Washington DC organised an American version of the Frankfurt meeting and found themselves hosting 88 delegates from 41 cities in 19 different nations, including many more mayors of US cities than they had imagined.

In spite of intense political pressure by US officials to get their allies abroad to adopt tougher drug policies, most have not been swayed and have instead moved towards more progressive public health alternatives (Nadelmann et al., 1994). At this writing',., Spain, Poland, Germany and Colombia have joined the Netherlands in moving sharply away from the drug prohibition paradigm pushed by the USA. Clinton is said, by his drug policy chief, to be 'extremely disappointed' by the Colombian decision to decriminalise use of all drugs (Treater, 1994a) . Even international police organisations are showing signs of drug policy glasnost. Raymond Kendall, head of Interpol, admitted recently that the drug war was 'lost' and 'making drug use a crime is useless and even dangerous' (Le Nouvel Observateur, 1993) . In short, the combination of domestic pressures and international developments have made conditions ripe, perhaps for the first time in US history, for a full, democratic debate about drug policy.

WILL CLINTON SEIZE THE TIME?

If I am correct in interpreting all these developments as signs of a drug policy glasnost, the question becomes: 'Will President Clinton seize the opening?' During the Presidential campaign, there were signs that the drug war would be de-escalated, at least in discourse. For the first time in over a decade, drug problems were not employed as a rhetorical resource by the candidates. Clinton's campaign speeches were notably free of quasi-religious crusades against demon drugs or militaristic mobilisations for the drug war. In fact, when he mentioned drugs in his campaign speeches he often did so in order to highlight the changes he would make if elected (e.g. shift federal resources away from law enforcement towards treatment and education) . He even said 'We ought to have treatment on demand' (New York Times, October 21 1993, p.A1).

One should not read too much into campaign promises, of course. It is likely that after years of a drug war with little to show for it, politicians learned the limits of using chemical bogeymen as political symbols. Throughout the Reagan years, officials of both political parties crawled over one another to seem 'tougher' on drugs than their opponents. In 1989, Bush made the drug issue his own by devoting his first major address to the nation to a call for a renewed crusade against drugs. Throughout the 1980s it seemed as if drugs' were the one issue in American politics on which elected officials could take a strong stand without fear of losing a single vote or a single dollar of campaign contributions. Being against drugs was like being for motherhood. In the end, however, they had few successes to point to and quietly reduced the centrality of the drug issue in their campaign rhetoric.

Candidate Clinton may have had his own substantive reasons for staying off the anti-drug bandwagon, but he may simply have recognised that the issue was exhausted from overuse

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and that it no longer offered any partisan advantage.

Once elected, President Clinton's signals on drug policy became decidedly mixed, at best. To keep his promises about shrinking the White House staff and reducing deficits, Clinton quickly cut the size of the 'Drug Czar's' office (Office of National Drug Control Policy or ONDCP) from 146 to 25. Yet, his first \$ 13.1 billion anti-drug budget, presented in March 1993, was a virtual replica of the one Bush proposed in 1992, including the allocation of 70% of those funds to law enforcement (Treaster, 1993b,c).

He waited several months before appointing a new Director of ONDCP, which prompted criticisms from Congress about not taking drug issues seriously. When he did appoint Lee Brown to the post of Director in April 1993, he elevated it to a Cabinet level position. Brown has not been a high visibility, law-and order ideologue like William Bennett, but he is a former New York City Police Commissioner, which says something about how Clinton defines drug issues. Brown initially stressed the need to shift resources towards education and treatment and at least mentioned the 'broad social context of drug use', a notion that Reagan, Bush and Bennett treated as treasonous. However, despite significant support for a greater emphasis on treatment and education in Congress and elsewhere, the early drafts of Brown's National Drug Control Strategy containing such ideas 'were significantly altered by White House editors fearful of appearing soft on drug related crime' (Treaster, 1993c).

After first refusing to specify whether his plan would really move funds from law enforcement towards treatment and education, Brown went out of his way to say that the administration would not be 'downplaying law enforcement'. Indeed, Brown said that he planned to put more police officers on the streets and to stop punishing only the worst offenders while letting first and second offenders off lightly (Treaster, 1993b). The latter point suggests that Brown has somehow remained unaware of who has been imprisoned by the drug war and for how long.

Clinton appointed Janet Reno as Attorney General, head of the Justice Department which oversees the Drug Enforcement Administration and the Federal Bureau of Investigation. She was a prosecutor from Florida, a major drug importation state, but she initially sounded a more progressive note on drug policy. In an early speech to a 'drug summit' in May 1993, for example, she questioned the effectiveness of interdiction, mandatory minimum sentences and the whole law enforcement approach. She called for a re-evaluation of drug policy on the grounds that drug abuse was only a symptom of 'deeper problems' which stemmed from the fact that 'we have forgotten and neglected our children' (Massing, 1993). One of her first official acts was to order a review of the effects on the criminal justice system of mandatory minimum sentences for drug offences.

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In September 1993, the Justice Department completed its review, but the White House ordered it withheld. When news began to circulate in January 1994 that the report was being hushed up, the Justice Department released it. As Attorney General Reno had suspected, the report found that over one fifth of all inmates in federal prisons were low level, non-violent, drug offenders, two-thirds of whom were serving mandatory minimum sentences of 5 or 10 years under the new drug laws (US Department of Justice, 1994). In state prisons the proportion of drug offenders is much higher because most drug offences are handled as state crimes. Meanwhile, by November 1993, Clinton had endorsed a crime bill containing several new mandatory minimum sentences for drug offences. The Attorney General has not been heard from on drug policy since her early speech.

A similar fate awaited Dr Joycelyn Elders, President Clinton's choice for Surgeon General, the chief medical officer of the US Government. Dr Elders has been heavily criticised by conservatives during her confirmation hearings for her strong support of sex education, condoms and abortion rights, but she did not back down or soften her views. Before taking office, Dr Elders also told reporters that physicians should be allowed to prescribe marijuana to patients who could medically benefit from it. She is not alone

in this view; nearly half of a sample of clinical oncologists, for example, admitted to prescribing it despite its illegality (Doblin and Kleiman, 1991). Once in office, she directed the US Public Health Service to begin a review of the Bush administration's policy of prohibiting even 'compassionate' medical use of marijuana. But a month later in the US Court of Appeals in Washington, the Clinton administration's Drug Enforcement Agency defended the legal classification of marijuana as a dangerous, addictive narcotic without medical value (Drug Policy Letter, 1994; see also Grinspoon and Bakalar, 1993).

The Surgeon General got into hot water on drug policy after a December 1993 speech against violence. In response to a reporter's question, Dr Elders noted that 60% of violent crime was drug, or alcohol, related, much of it 'to get money to buy drugs', and that such crime therefore might be significantly reduced 'if drugs were legalized' (San Francisco Examiner, 1993). She noted that she did not 'know all the ramifications of [legalization]', but thought 'we do need to do some studies' (Baltimore Sun, December 8, 1993; cited in Drug Policy Letter, 1994, p.9).

An increasing number of government officials around the world accept her assertion as common sense, but after nearly a century of anti drug rhetoric and the Reagan-Bush drug war, many Americans hear it as heresy. Conservative criticism came fast and furious. Those who earlier

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had attacked her views on sex education, condoms and abortion called her a 'radical' on drug issues whose views were 'outside the mainstream'. Republicans in Congress called her remark 'just another indication of this administration's retreat on all fronts of the drug war', called for her to be fired and took Dr Elder's view as 'a signal that the White House is raising the white flag of surrender and giving up the war on drugs'.

The White House immediately repudiated Dr Elder's statement: 'The President is against legalizing drugs, and he's not interested in studying the issue.' Drug control Director Lee Brown added that legalisation is 'a formula for self destruction' that would inflict 'terrifying damage' (San Francisco Examiner, 1993). After this incident, Dr Elders was instructed by the White House to make no public statements supporting even research on medical marijuana.

Hopes for a marked shift away from the drug war to more progressive approaches have continued to fade since the silencing of the Surgeon General and the Attorney General. Faced with charges by the right-wing in Congress that his administration was abandoning the drug war, the President brought his Vice President and half his Cabinet to a county jail near the Capitol on 9 February 1994 to announce his National Drug Control Strategy, the most costly in history (Jehl, 1994). Among other things, the Strategy allocated \$10 million to restore 40 of the positions he originally cut from the Drug Czar's office.

As per his campaign promises, however, Clinton did increase the share of the drug budget for 'treatment and prevention' to 41 % from the roughly 30% of the Reagan-Bush years. Drug Policy Director Brown announced this shift in funding as a 'fundamental change in the way the nation responds to the drug problem' (Treaster, 1994b). Yet, the shift may be more apparent than real. For the Clinton drug budget also increased the total net funding for law enforcement, and half of the increase in what the Clinton Strategy calls 'prevention' has been allocated to community policing programmes (Klinenberg and Lewis, 1994).

Further, despite studies by both the US General Accounting Office and the national Centers for Disease Control showing that needle exchange is a promising AIDS prevention tool, the Clinton administration's National Drug Control Strategy remained silent on needle exchange. And in spite of clear campaign promises to make treatment available or request for all who need it, Clinton's Drug Strategy contains no plan for doing so and added only enough treatment money to serve about 5% of those in need (Drug Policy Letter, 1994). Clinton has softened his drug policy rhetoric and emphasised treatment and education, but the essentially militaristic vision of the drug war remains like a cataract on the eyes of his administration.

THE POLITICAL CONSTRAINTS ON DRUG POLICY REFORM

All of this suggests that, on drug policy, the Clinton administration is not much different from Reagan's or Bush's, and that Clinton is not about to take advantage of the apparent glasnost in drug policy in the USA and abroad. The question is why, and the answer is politics.

First, Clinton's supply of political capital has been eroded by political mis-steps, foreign policy problems and personal scandals. He clearly does not want to waste his remaining chips on what he sees as a losing battle for drug policy reform that he may well not believe in anyway. Second, his re-election in 1996 depends in large measure on his ability to pass national health care and welfare reform. Both will be expensive in the short run even though they may save money in the long run. The President is hemmed in by the 'designer deficits' of three successive Republican administrations who left the fiscal cupboard bare precisely to prevent new social spending by the likes of Clinton. His own success at beating Republicans at their own game by reducing the budget deficit is a further fiscal constraint, especially when he faces a taxaverse electorate living in an economy that grows without producing jobs or raising living standards.

Third, the President's agenda, and his hopes for re election, hinge more generally on his ability to retain the support of the electoral centre. Unlike European style parliamentary systems, the winner-takes-all, two-party system in the USA pushes candidates of both parties towards the ideological middle in order to win. It is worth recalling that one key reason Clinton beat Bush in 1992 was that he moved away from the progressive wing of the Democratic party and won back the disaffected Democrats who had defected to Reagan and Bush. Clinton positioned himself as a centrist long ago as Governor of Arkansas, and as a presidential candidate he distanced himself from African Americans and labour, historically the two most solid and left-leaning constituencies of the Democratic Party. He has demonstrated his aversion to policies that are not already backed by solid majorities in opinion polls. He deserves great credit for his leadership on national health care, for example, but earlier election results and opinion polls had made it clear that a strong majority of voters, and a substantial segment of big business, already supported it.

Similarly, it is characteristic of Clinton's centrism that he supports the death penalty, which is also backed by a majority of Americans. This stand helps keep the 'weak liberal' stigma from sticking. Clinton's electoral calculus seems to hold that he must be tough on crime and drugs to reduce his vulnerability to the Right on law and order issues. Even if he were so inclined, the President would be foolish to even appear to entertain a more progressive drug policy after public opinion has been so successfully mobilised by successive drug wars. And if he did, he

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would face politically potent law enforcement entrepreneurs, most of whom are as ideologically invested in the drug war as their agencies are financially dependent on it.

In this sense, Clinton's obvious intellectual advantages over his predecessors are a double-edged sword. Clinton, the gifted and industrious policy analyst, is smart enough to know that the drug war has been a costly failure. But Clinton, the insightful political analyst, is too smart to try to sell this to a public that has been bombarded with drug-demonising rhetoric for most of the twentieth century, particularly when he is already up to his ears in other controversial policy issues.

Beyond Clinton's calculus for re-election, there is a fourth, more basic, political constraint working against drug policy reform. It is an unwritten law of American politics that to retain power, good money must be thrown after bad. This helps account for why officials of both parties appear almost literally addicted to criminalisation: they cannot seem to give it up even though higher and higher doses have less and less effect and more and more negative consequences. One of the few things drug prohibition has going for it is momentum. After decades of political posturing against drugs and billions spent on drug wars, it would be courting political suicide to reverse field at this point. To unsell the drug war, a politician would have to admit that our government has systematically misled the public and misspent their reluctantly rendered tax dollars to imprison millions of their children, and all without having much to show for it. This would be like saying, 'Oops, sorry folks, but most of that stuff we've been trying to get you to believe about drugs all these years isn't really supported by scientific evidence, and the policies we've been exhorting you to support have never really worked'.

For all these reasons and more, Clinton the centrist seems rather unlikely to move far from the conservative, law-enforcement model of drug policy. To the extent that current developments in the drug policy arena can be said to constitute a glasnost, the President will have to be pushed hard before he even acknowledges it. Unfortunately, some silly ideas about how to deal with drug problems have become conventional wisdom in the USA. That 'wisdom' is resistant to change, and Clinton believes he cannot deviate too far from it and remain in power. It is as if the smartest, most progressive President in years takes seriously what John Kenneth Galbraith (1958, p. 130) meant sarcastically: 'It is a far, far better thing to have a firm anchor in nonsense than to put out on the troubled seas of thought.'

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