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Review Essay

**Regulating Heroin: Kaplan and Trebach on the
Dilemmas of Public Policy**

Mark H. Moore

JOHN KAPLAN, *The Hardest Drug: Heroin and Public Policy*. Chicago: University of Chicago Press, 1983. Pp. 247. \$20.00.

ARNOLD S. TREBACH, *The Heroin Solution*. New Haven: Yale University Press, 1982. Pp. xvi + 331. Cloth \$30.00; paper \$9.95.

In social policy, as in much of life, the rhythms of thought, knowledge, and action are often out of synch. We learn the right way to think about a problem and have the appropriate evidence at hand only after the moment for decision has passed—not necessarily because the problem has disappeared or been solved, but more often because interest has shifted elsewhere. So, it is unfortunate that two powerful and interesting books about heroin policy have appeared when the focus of government attention is elsewhere—on the lesser drug problems of cocaine and marijuana. Still, if scholars in years to come look back at what has been written, the books by John Kaplan and Arnold Trebach will prove enormously useful to those who must think about heroin policy the next time around.

Although the books touch on many aspects of heroin use, they focus on the major structural question in heroin policy: On what terms and conditions should heroin be made available in the United States? Current policy is probably as close to an outright prohibition as we can come. While some research uses of heroin are allowed and a few people suffering from painful terminal diseases have access to heroin as part of research activities, the use of heroin is, for all intents and purposes, banned in the United States. This means that all plausible policy alternatives lie in the direction of liberalizing the availability of heroin.

Of course, there are many degrees of liberalization—ranging from permission to substitute heroin for morphine in treating painful and terminal organic diseases, to using heroin as a “hook” to draw addicts into therapeutic relationships with physicians, to providing tightly regulated heroin main-

Mark H. Moore is Guggenheim Professor of Criminal Justice Policy and Management, John F. Kennedy School of Government, Harvard University. B.A. 1969, Yale University; M.P.P. 1971, Harvard University; Ph.D. 1973, Harvard University.

tenance programs as part of our treatment of heroin addicts, to authorizing all physicians to prescribe heroin as part of treatment programs for addicts, and ultimately even to allowing over-the-counter sales of heroin. So, the question that Kaplan and Trebach consider is not only whether policy should shift toward widening access to heroin but also, if so, how far.

After giving this question a close examination, the authors come to radically different conclusions. Since Kaplan's book is designed more to structure and inform the debate than to argue for a conclusion, he never explicitly states one. But he gives the strong impression that he would consider any liberalization of heroin policy unwise. Here is the paragraph that sounded most like a conclusion in his book:

We have now looked at the likely results of making heroin freely available and at the probable costs and benefits of heroin maintenance. After this examination, we may still prefer heroin prohibition, for all its faults, to either of these innovations. Our present policy, however, involves a good deal more than the criminalization of supply, which is the hallmark of any prohibition.

. . . The law, in addition, bears directly upon the user himself, and not merely by making it more difficult and expensive for him to obtain his drug.

It is true that once it is decided that prohibition is the preferred policy for heroin, decisions as to the legal treatment of the user represent a kind of fine-tuning of that policy. Nonetheless, since the crimes incident to heroin use . . . result in far more arrests than do the crimes of trafficking, it is important to look at these user-oriented policies in some detail. Indeed, it may well be that changing these will turn out to be the most practical way available to lower the overall social cost that heroin imposes on us. (At 189)

Trebach, on the other hand, writes as an advocate who has reached a conclusion and is trying to persuade others. Indeed, the very title of his book suggests that he believes he has the solution to the heroin problem. And the last chapter of his book is entitled "A Practical Vision for the Future." The practical vision he endorses includes the following recommendations:

7. Heroin should be made available, by new laws or court decisions, to all patients under the care of a doctor, not only to the terminally ill. . . .
8. Federal and state laws should be pulled back to the perimeters of the addiction problem. Doctors and other members of the helping professions should be encouraged to move, en masse, back into the center arena, where one of the primary functions of the guardians of the law will be to protect the helpers, not harass them. . . .

9. Social policy in the future should devise methods to help people both to use drugs in beneficial ways and to create a new ethos of higher consciousness that goes beyond drugs. (At 293-94)

Why do these two careful scholars reach such different conclusions? In principle, they may have disagreed about possible consequences of a policy or about which consequences might be of most concern to society. They could make different predictions about the consequences of a change because they had either looked at different evidence or interpreted similar evidence differently. They could differ on the importance of various effects of a

policy either because they had focused on too narrow a set of effects or because they had examined the same set of effects and made different value judgments about individual effects. In my view, all these contribute a little to their different conclusions. But there is something else as well.

Kaplan and Trebach have remarkably similar diagnoses of the current heroin problem in the United States. Unlike Charles Silberman¹ and Edward J. Epstein,² who concluded that the heroin epidemic of the 1960s and 1970s was a fraud perpetrated by President Nixon for short-run political reasons, both Kaplan and Trebach believe that a dramatic increase in heroin use did occur over this period—not only in this country but in England and the rest of the world as well. They also agree that many of the worst consequences of heroin use in the United States—the crimes committed by addicts, their deteriorated physical health, and perhaps even their economic and social dependence—might plausibly be attributed not to heroin itself but to the characteristics of users, the subcultures in which heroin is used, and the social policies now governing heroin use.

Part of the reason they minimize the role of heroin itself in shaping the problem is that they see the drug as less addicting and less compelling than most people now believe. They are quite clear that the mechanisms of tolerance and withdrawal, on the one hand, and the potential for pleasurable, euphoric feelings, on the other, make heroin a *relatively* compelling drug—one that is more likely than others to seduce users into long-term, intensive patterns of use. But they also note the accumulating evidence indicating that many people use heroin without ending up in the chronic, intensive-use patterns that characterize “addiction.”³ Moreover, they review the medical and physiological evidence that absolves heroin from any role in stimulating aggressiveness or in causing organic damage to users (Kaplan at 5–8). If heroin is relatively benign in terms of immediate psychological and health consequences, and if addiction is less exacting than previously assumed, then there is room for characteristics such as personality and social position to influence the behavior and condition of users, and more of their current behavior and condition must be attributed to these characteristics.

This shared diagnosis of the problem provides significant motivation to consider liberalizing heroin use. If many of the bad consequences can be attributed to current prohibition policies, then the best way to solve the current problem may be to change those policies. That simple syllogism is what motivates their investigations. But their investigations must then cross an enormous intellectual gulf: They must imagine all the relevant dimensions on

1. Charles E. Silberman, *Criminal Violence, Criminal Justice* (New York: Random House, 1978).

2. Edward J. Epstein, *Agency of Fear: Opiates and Political Power in America* (New York: Putnam, 1977).

3. See, e.g., Norman E. Zinberg & Richard B. Jacobson, *The Natural History of ‘Chipping,’* 133 *Am. J. Psychiatry* 37 (1976); Lee N. Robins & George Murphy, *Drug Use in a Normal Population of Young Negro Men*, 57 *Am. J. Pub. Health* 1585 (1967); Lee N. Robins, *Special Action Office for Drug Abuse Prevention, The Vietnam Veteran Returns, Monograph Series A, no. 2, item 857-B-3* (Washington, D.C.: Government Printing Office, 1974); and Bruce D. Johnson, *Once an Addict, Seldom an Addict*, 7 *Contemp. Drug Probs.* 35, 48-49 (1978).

which the world might change and use whatever reasoning and evidence is available to guess in what directions and how large those changes will be. In crossing this gulf, they rely most heavily on their understanding of England's experience.

Their accounts of the English policies are, again, quite similar. The surprising parallels between British and U.S. laws governing drug use are once again revealed. The sources of our current policy differences are traced, once again, to the difference between the Rolleston Committee's report in England,⁴ which countenanced the ordinary prescription of heroin to addicts as part of a therapeutic program designed to cure addiction, and the enforcement actions taken in the United States and backed by the Supreme Court,⁵ which denied that mere maintenance of addicts on heroin constituted a legitimate medical purpose. And the recent history of British policy, which became *more* restrictive (and therefore more like ours) in the face of a dramatic increase in heroin use in the late 1960s is also delineated in both books. This is all well known to those who follow heroin policy but perhaps less well known in the general population.

The new contribution in this area comes from Trebach, who has a more fine-grained and more current analysis of the recent British experience than I have previously seen published. His observations are quite interesting. He notes, for example, England's increasingly restrictive policies that, in the first phase, withdrew the right of all but a few physicians in government-sponsored clinics to prescribe heroin to addicts. Later, a further tightening of policy discouraged intravenous heroin maintenance in favor of oral methadone maintenance (which has less accentuated effects on mood) or gradual withdrawal from heroin. Moreover, he traces this shift in policy to the professional goals and frustrations of the physicians who staffed the clinics rather than to any official sanction.

Trebach observes that no agreement in Britain about the goals or protocols of treating addiction through maintenance existed when the clinics were established. Indeed, he describes at length the views of a British expert who believes that "drug addiction is a condition which may or may not be a disease, for which there is no specific treatment, no reliable diagnostic method, and no accurate testing technique to assess how much of the substance that forms a central part of that condition the patient is consuming" (at 187). To the extent that British physicians had a view of heroin treatment then, it was to make "the addicts less deviant, less visible, more like ordinary people" (at 188). And this inevitably put the doctors in the role of exercising social control over the addicts as well as providing treatment.

The problem was that these physicians confronted many heroin users who

4. The Rolleston Committee was appointed by the British Minister of Health in September 1924 to study the problems of drug abuse and to advise the government on the appropriate role of the medical profession in treating drug problems. The Committee was composed of a group of leading physicians and chaired by Sir Humphry Rolleston. The final report of the Committee was delivered in January 1925, but, according to Trebach, "its advice is ageless" (at 90).

5. *Webb v. United States*, 249 U.S. 96 (1919).

did not want to give up heroin use and preferred to badger the doctors about the amount of heroin they would be given. As Trebach observes:

Nothing in medical or nursing education can adequately prepare a professional for this draining, harsh, dirty business. I got the impression that many of the clinic psychiatrists, nurses, and social workers had simply been worn down to the point of utter annoyance by addicts who came back year after year seeking not improvement, not a better life, not rehabilitation, but drugs to stick into their veins. And I suspect also that the clinic staffs were making an ethical judgment that what they were doing year after year could not be justified by any set of social values with which they were familiar. (At 191)

The result was the gradual development of a policy that was even more restrictive and even more like ours than was suggested by the second Brain Committee report in 1965.⁶

Trebach regrets the appearance of a policy that seems so determined to restore addicts to proper social functioning that it risks driving the addicts from the clinics into black markets, crime, and imprisonment. It is not so much the element of control and socialization that he objects to, however. As he remarks:

[D]octors *are* agents of social control, and it would be best for all concerned if they carried out that function with an appreciation for all the ethical and social, as well as medical, issues involved.

...
The goals of the helping professions, however, must extend beyond the treatment-or-control controversy, they must include a definition of the type of behavior expected of patients. The definition must consist mainly of socially responsible behavior. (At 224) (Emphasis in original)

What Trebach objects to is the apparent loss of flexibility in the system—the inability to tailor social responses to individual need and circumstance. He finds hope in the spirit of a British doctor named Beckett who, after treating addicts for many years, recognizes “the gentle nature of heroin” (at 203), and imagines that heroin might sometimes “allow a gradual personality growth which otherwise would be impossible” (at 204, quoting Beckett himself). As Trebach writes enthusiastically:

This humane philosophy, I believe, contains the essential refutation of the currently dominant English treatment philosophy. The Beckett ideology is the latter day essence of Rolleston. It cautions against mass diagnoses of individual problems, against black and white solutions, when the only sensible ones are gray. . . . Some addicts need therapy and heroin, but therapy and confronta-

6. The Brain Committee, which was composed almost entirely of doctors and, like the Rolleston Committee, was appointed by the British Minister of Health, was designated in June 1958 and chaired by Sir Russell Brain, a distinguished physician. Trebach considers why another committee was appointed to study the same question studied by Rolleston (at 101-2); but, whatever the reasons, the Brain Committee completed its report in November 1960 and declared that no change was needed in the British approach to drug addiction. In 1964, under pressure from both private citizens and drug experts who were concerned with the mounting drug problems (Trebach at 108), the Minister of Health reconvened the Brain Committee, which recommended in 1965 that Britain's drug policies needed revising.

tion more than the drug; some need both therapy and drugs; others need heroin or other drugs only, until they are ready for therapy . . . the emphasis should be on care rather than cure until the addict matures enough to cure himself. (At 204)

I have gone on at length describing Trebach's analysis of current practices in Britain for two reasons. One has already been mentioned: it is news. But it does not change what we know about the aggregate characteristics of British policy: that it has become more restrictive and that the restrictiveness seems to have slowed the increase in the rate of heroin use, but also that it has significantly changed the drug scene in England so that it now has more of the criminal aspects of the U.S. heroin scene than ever before.

The second reason I present this analysis is that it offers a clue as to why Kaplan and Trebach come to such different conclusions. After all, so far, their data and analyses have been quite similar. They agree that much of the current U.S. problem is generated by our policies rather than by heroin itself. Moreover, they tell the same story about England's experience. So why do they reach different conclusions about the advisability of making heroin more freely available?

One answer (from the perspective of technically appraising these books as policy analysis pieces) is that the authors examined a somewhat different set of effects and accorded different levels of importance to the effects they observed. Indeed, there is one quite remarkable asymmetry in their analyses that seems to have a dramatic impact on their different conclusions.

Trebach opens his analysis with a compelling description of the value of heroin as a drug for treating organically damaged, pain-wracked, terminally ill patients. He writes this chapter with the special passion, conviction, and weight that comes from personal experience. And he persuaded me that there might well be a role for heroin in such situations. Consequently, when reckoning the potential costs and benefits of wider availability of heroin, this must be considered a benefit. Neither Kaplan nor I have seriously considered this feature of wider availability in our writings.

Kaplan, on the other hand, gives a great deal of time and attention to how the increased availability of heroin would affect patterns of heroin use in the general population—not only the number of new experimental users, but also the effects on (1) the number that advance to chronic, intensive levels of use, (2) the number that stay in these patterns longer than they otherwise would, (3) how the users would sort themselves among different kinds of treatment programs, and (4) the behavior and condition of the users in each level of consumption. His conclusion is that the wider availability of heroin associated with either heroin maintenance or free availability could result in much higher levels of destructive heroin use than we now experience. He does not disagree with the view that under a system of wider availability many new users would function better than addicts now do and that the *average* behavior and condition of heroin users might improve as heroin use became more common and less deviant. But he apparently cannot persuade himself (and

neither can I, given the available evidence) that there is only an insignificant chance of the absolute number of heroin addicts in the worst social and economic condition increasing dramatically—perhaps even by a factor of two or three. As he concludes: “[O]ne would have to be an incurable optimist to believe that heroin could be made freely available without a considerable degree of social dislocation” (at 146). Indeed, it seems to be primarily this worry—that increased availability of heroin would result in increased use at all levels of consumption—that counsels him, in the end, to reject liberalization and to prefer a policy that maintains the current prohibition on supply and focuses coerced treatment on those addicts who have committed property and violent crimes. On this crucial question—whether and how wider availability would affect aggregate levels of use and forms of treatment other than heroin maintenance—Trebach is silent.

So, each analyst sees a potential effect that the other ignores and ignores one effect that the other sees. Since the effect Trebach observes and Kaplan ignores (e.g., using heroin to treat the organically ill) is a potential benefit of wider availability, and since the effect that Kaplan observes and Trebach ignores (e.g., the risks of wider heroin use, more addicts, and less success with treatments such as methadone maintenance and therapeutic communities) is a potential cost, their different conclusions may be based on their different omissions.

But in my view, this is too rational an explanation for the different conclusions. The reason they came to opposite conclusions is that they approached the problem in fundamentally different ways. Psychiatrists have shown that human minds have enormous difficulties with both complexity and uncertainty. There are overwhelming pressures to try to shrink complex problems into simpler forms that can be processed more readily—even though the simplification involves distortions. In that awkward moment after one has gone through structuring the problem, reasoning, looking at the evidence, and the decision is finally at hand, it is very hard to resist the temptation to fall back on a single, simplifying principle. I think Trebach yielded to the temptation to be guided by a vision—an aspiration—rather than a clear-eyed assessment of the facts, and Kaplan focused more on the realities as he came to his conclusion.

There are many clues to indicate that Trebach is in the grip of an ideological vision. One clue is that there is a fundamental disconnection between his evidence and his prescription. His prescription is for a world where addicts can be protected in their functional use of heroin and coaxed out of their dysfunctional use with individualized treatment programs and without any social indictment of heroin use. In effect, this would be a world where all addicts eventually want to get better, where all physicians have the diagnostic skills and patience of the most creative and disciplined clinicians, and where the physicians can summon what social control they need from their own personal relationships with their patients without relying on social norms established in laws, traditions, and ordinary expectations.

One can, of course, say that casting doubt on all this is itself an ideological position. But the crucial point is that the evidence he has from Britain casts great doubt on the reasonableness of his view. In a country he clearly admires, with the most favorable conditions for the success of his proposals, with policies that most resemble what he would like to see adopted, the policy he recommends for the United States did not work as he hoped. Most addicts did not want to get better. Most physicians lacked the personal and clinical skills even to distinguish functional from dysfunctional heroin use, let alone to apply the treatments that would gradually free both kinds of addicts. And I dare say that one of the few things that allowed the physicians to succeed with the addicts at all was that a norm hostile to heroin use existed throughout the society.

A second clue is his emphasis on the value of heroin use in treating the organically ill and his neglect of the question of how availability would affect patterns of use. Trebach performs a valuable service in focusing our attention on this potential value of heroin, but the point has little to do with the fundamental question of the book: whether, and under what circumstances, heroin can be successfully used to help *heroin addicts* assume socially productive lives. The only functions performed by the chapter on treating the organically ill with heroin is to help us think of heroin as a "gentle drug," and to prevent us from adopting a prohibition policy because of superstitious fears about heroin. But neither Kaplan nor I value the prohibition because we harbor superstitious fears. And I doubt that Trebach's account will persuade those who *are* superstitious about heroin that they should be less frightened.

In the end, Trebach forms his conclusions about heroin policy because he wishes they could succeed. He loves the idea that people could grow—perhaps with the benefit of drugs. He clearly admires psychiatrists and other members of the helping professions, and prefers to entrust them, rather than policemen, lawyers, or judges, with the tasks of social control. He values individual freedom and diversity nourished by competent psychiatry. And this vision guides his views on heroin policy.

Kaplan comes to his views because he rejects ideology in favor of a more complicated and distasteful reality. His commitment to the truth is clear in his wider search for evidence (he is not nearly as bound to England as Trebach), in his determination to structure and inform rather than to conclude, and in his willingness to question whether any policy would be better than our current policy, despite the obvious difficulties of the current policy. But perhaps the clearest evidence of Kaplan's resolve is his willingness to focus so carefully on the most important and most uncertain question in heroin policy: What would happen to patterns of use if heroin became more widely available?

In my view, his achievement is all the greater because he rejects an ideological position that would be as strong and natural to him as Trebach's vision was to Trebach: the view that heroin should be legalized because it is wrong to try to legislate morality. Kaplan traces this view to John Stuart

Mill's maxim that "The only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others" (at 103). After noting, however, that the prohibition of heroin could conceivably be justified by the two exceptions that Mill made to that maxim (which would allow for the protection of children and prohibit people from voluntarily becoming slaves), Kaplan dispatches the ideological argument with a characteristically piercing observation: "The examination of Mill's exceptions to his principle is not only inconclusive; it is probably unnecessary. The real problem is that the great majority of us do not agree with Mill's principle to begin with" (at 106).

In his essay entitled "Politics as a Vocation," Max Weber writes about some of the essential qualities of the politician or statesman. One of these is passion. But not, as Weber says, the "'sterile excitation' which was peculiar to a certain type of Russian intellectual" but instead a sense of "matter-of-factness," the "ability to let realities work upon him with inner concentration and calmness."⁷

In my view, Kaplan comes closer to the impossible challenge of letting the realities operate on his mind and thus does us the favor of letting us see those realities. But I am grateful that both of these books were written and commend them both quite highly.

7. Max Weber, *Politics as a Vocation*, in H. H. Gerth & C. Wright Mills, ed. and trans., *From Max Weber: Essays in Sociology* (New York: Oxford University Press, 1946).



