The Drug Wars in America, 1940–1973

The Drug Wars in America, 1940–1973, argues that the U.S. government has clung to its militant drug war, despite its obvious failures, because effective controls of illicit traffic and consumption were never the critical factors motivating its adoption in the first place. Instead, Kathleen J. Frydl shows that the shift from regulating illicit drug use and sales to criminalizing them both developed from, and was marked by, other dilemmas of governance in an age of vastly expanding state power. Most believe the "drug war" was inaugurated by President Richard Nixon's declaration of a war on drugs in 1971, but in fact his announcement heralded changes that had taken place in the two decades prior. Frydl examines this critical interval of time between regulation and prohibition, demonstrating that the war on drugs advanced certain state agendas, such as policing inner cities or exercising power abroad. Although this refashioned approach mechanically solved some vexing problems of state power, it endowed the country with a cumbersome and costly "war" that drains resources and degrades important aspects of the American legal and political tradition.

Kathleen J. Frydl is the author of *The G.I. Bill* (Cambridge, 2009), which won the 2010 Louis Brownlow Book Award from the National Academy of Public Administration. She received a fellowship from the Woodrow Wilson Center to support her research for this book.

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To Larry Janezich

Power obviously presents awkward problems for a community which abhors its existence, disavows its possession, but values its exercise.

John Kenneth Galbraith, *American Capitalism*[1]

[1] J. K. Galbraith, *American Capitalism: The Concept of Countervailing Power* (Cambridge: Riverside Press, 1952), 26.

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Preface

There is no issue where government policy diverges from American popular opinion – let alone popular American practice – as drastically as it does in the handling of illicit drugs. This book was written to embolden the people's consensus and narrow the divide between the government and its citizens by presenting a history that casts doubt on the supporting tenets and presumed purposes of the so-called drug war.

It does so by offering an account of the federal government's original approach to illicit drugs, a scheme of taxes and tariffs, and tracing its demise. This story reveals that the shift from a regulatory regime toward a punitive and prohibitive one was not dictated by a surge in illicit drug use, crimes associated with drug use, or changes in drug potency or price, although it is most definitely the case that the availability of drugs rose dramatically in the years following World War II. Nor was this move in favor of prohibition brought about by changes to the constitutional powers accorded to the federal government, even though it is perfectly true that changes in judicial readings of the commerce clause during the New Deal and World War II made possible the sweeping legislation of the 1960s and 70s that provide the legislative basis for today's drug war.

Be that as it may, if one examines the reasons motivating the change in how the federal government handled illicit drugs by actually inspecting the historical record that bears witness to it, it becomes clear that some of the commonly cited reasons are consequences of that change, rather than causes, and others are events that coincided with and shaped the drug war but did not precipitate it. Instead, the government dropped one set of instruments and institutions to regulate drugs and substituted another because of the challenges posed by the unprecedented rise in power of

the United States during the postwar era. Hence a larger ambition of this book is to chart and explain the federal government's abandonment of the tax code as the principal means to regulate citizens' behavior, and its adoption and reliance upon criminal punishment in its place. I argue that, more than anything else, the drug war extended or enabled certain state agendas, like policing inner cities embroiled in conflict, or wielding influence and power abroad, especially throughout the developing world. In its versatility and application, the drug war compensated for deficiencies in other institutions and instruments of government. Bereft of other tools, the state punished its way to power.

This history implicitly suggests – and I explicitly argue – that the drug "war" is not the only or best way to handle drugs. I want to note at the outset, however, that the paramount virtue of alternative schemes is merely that they are less bad. Although superior to a militant drug war, legalization and decriminalization are far from worthy goals in their own right. Perhaps it is because many Americans instinctively sense this that proposals to legalize or decriminalize possession of illicit drugs have stalled. After all, it is hard to muster troops to dismantle an entrenched system of power with just a rallying cry of sober pragmatism, and harder still to join the chorus of some of the most vocal drug reform proponents who seem only to be on a quest to secure better or safer drugs. Yet the many costs of the drug war exact their price regardless of our uninspired indifference; equally troubling, many precedents and practices of the drug war have found use in the government's current "war on terror," another sprawling government agenda that has not encountered the critical appraisal that either its expense or its incursions into customary freedoms would seem to demand. It is apparent, then, that Americans will have to either reverse course on the drug war and its progeny, or else sanction and support a government increasingly unaccountable to its people and the American political tradition.

Kathleen J. Frydl
Washington, DC, 2012