

## Indecisiveness and Evasion

***Task Force Report: Narcotics and Drug Abuse. Report of the President's Commission on Law Enforcement and Administration of Justice. U. S. Government Printing Office, 1967. Price \$1.00, 158 pp.***

***Reviewed by: Edwin M. Schur, Tufts University***

On the first page of this report it is stated that recent drug laws and programs "signify that the Nation's approach to narcotic addiction has changed fundamentally. They are a creative effort to treat the person who is dependent on drugs." Unfortunately, such an assessment is not substantiated by the facts, and indeed the very contents of the report clearly belie the optimism implied in this claim. To be sure, there has been a great deal of talk about new, more medically-oriented approaches, and the Commission pays the usual obeisance to the call for non-punitive outlooks and for a treatment emphasis. Yet the Commission's specific recommendations signify no real intention to initiate significant change in this direction, despite the conclusions reached by several of its major consultants to the effect that prevailing policy often has been based more on emotion than on reason, and that an exclusive concentration on enforcement efforts may be of limited value and may even produce positively undesirable results.

The Commission's statement on drugs (that is, the chapter on drugs in the Commission's overall report—printed also as the first section of this task force report) comprises an inadequate nineteen pages—in which an attempt (doomed to failure by virtue of inadequate space alone) is made to discuss diverse types of drugs, all drug laws, enforcement activities, treatment programs, and other relevant matters. Apart from advocating widened discretion to courts and correctional authorities to provide flexibility in the disposition of drug offenders (in essence, an

endorsement of an earlier recommendation of the President's Advisory Commission on Narcotics) the Commission advances no significant policy proposals. Rather, it contents itself with glittering generalities, with sketchy and inconclusive reviews of pro and con arguments relating to several issues, and with recommendations for increased public and professional debate, further educational efforts, better cooperation between interested professionals, and greatly expanded research activity. Thus, while the Commission might have tried to spell out those policies which it deemed most rational and desirable in terms of existing knowledge of the drug problem, it fell back instead on the politically convenient cliché that present knowledge is inadequate for purposes of policy formulation. In place of an even tentative statement as to where we might go from where we're at, the Commission provides merely a slightly warmed-over rehash of numerous previous reports which do little more than outline the status quo. A full explanation of just why this should have happened would require a first-hand analysis of the working procedures of the Commission—including the precise relation between its deliberations and the work of the full-time staff and part-time consultants—an analysis which this reviewer is not in a position to provide. Other critics have pointed to the absence of a social scientist on the Commission itself, and to the "political" nature of its membership; certainly it does appear that in assessing the drug problem the Commission was more responsive to political considerations (in the broadest sense) than to disinterested evidence and analysis concerning the existing drug situation and the drug policies currently in force.

This result is particularly surprising in the light of the major consultants' papers included in this report—which for the most part represent comprehensive and enlightened survey and analysis of drug use and drug control efforts. It is true that no contribution by any of the leading sociological specialists in this field is included in these materials, yet the authors cover a great deal of ground, refer to many of the most relevant social science findings and perspectives, and incisively consider the consequences and implications of proposed and existing public policy measures. Among these efforts are three well-documented papers by psychologist Richard Blum and associates—assessing the nature of various drugs and of drug use with special reference to their relation to "dangerous behavior" (including excellent contrasting reviews of "reported risks" and "verified risks" in each case) and considering also some of the broad implications of policy alternatives; a brief and somewhat superficial, but generally reasonable, survey of various treatment programs—

by psychiatrist Jonathan Cole; and very carefully reasoned analyses of proposals for “dangerous drug” legislation (primarily dealing with barbiturates and amphetamines, but also including some special consideration of LSD and marijuana), and of civil commitment programs and proposals—by law professors Michael Rosenthal and Dennis Aronowitz, respectively.

Both in general tenor, as I have already indicated, and with respect to several specific issues, the contrast between these advisory papers and the Commission’s own recommendations (or, rather, lack of same) is striking and most disheartening. For example, the effort to control marijuana use received extensive and thoughtful coverage in the consultants’ papers. Both Blum and Rosenthal indicate the discrepancy between alleged and demonstrated effects and dangers of marijuana use, in particular noting the extremely tenuous nature of the “leads to heroin addiction” argument. Rosenthal goes on to outline and evaluate existing laws and penalties, and concludes that major revisions are called for. He recommends that manufacture, disposition, and possession with intent to dispose should be criminal offenses, but that neither simple possession nor use should be punishable. Noting that most use is experimental, and that there are many relatively young users with respect to whom criminal treatment may be especially inappropriate, Rosenthal states that:

the possibility that repeal of existing prohibitions on simple possession and use might increase use is not deemed sufficient reason for retaining them, especially when it is far from clear that lifting these restrictions would lead to a large increase in habitual use or in use by persons likely to become dependent on heroin or other drugs.

What does the Commission make of this? Practically nothing. It presents a two-page discussion of the entire marijuana question, asserts that “differences of opinion are absolute and the claims are beyond reconciliation,” and recommends that the National Institute of Mental Health “devise and execute a plan of research, to be carried on both on an intramural and extramural basis, covering all aspects of marijuana use.” Surely one is entitled to ask why the Commission bothered to solicit learned analyses from its major consultants if it had no intention of paying serious heed to their recommendations!

The same sort of indecisiveness is evident in the Commission’s statements concerning the so-called civil commitment programs and proposals. On the basis of a meticulous sociolegal analysis (in which, among other things, he presents a very well-reasoned refutation of the standard

arguments in support of this practice—which often rely on analogies to psychiatric commitment and contagious disease quarantine procedures), Aronowitz determines that the involuntary commitment of non-criminal addicts (*i.e.* commitment based simply in their being addicted) is an undesirable public policy. Indeed he concludes that “as long as there is no evidence to show that existing methods for treating addiction hold out a reasonable prospect of cure, civil commitment is but a euphemism for imprisonment.” The Commission, on the other hand, concludes that “involuntary civil commitment offers sufficient promise to warrant a fair test,” and while it warns that the practice should not be allowed to become the “civil equivalent of imprisonment,” it is satisfied merely to summarize all of the arguments for and against this policy.

These two examples are symptomatic of a broader tendency in the drug report to evade almost completely any critical assessment of the substance and administration of current narcotics laws (apart from the matter of penalties, on which—as already noted—the Commission did take a progressive stand). Should we not at least expect such a Commission to move beyond an uncritical assumption “that the present legal system is unquestionable” (as one critic has noted it largely failed to do)? Certainly in the narcotics field, the Commission was excessively equivocal in its determinations and unduly hesitant to challenge prevailing practices and doctrines. It was hardly surprising to find the British experience dismissed rather peremptorily; much more serious is the scant attention paid to serious (and purely domestic) critiques of our present drug laws and enforcement practices. While there is a distinct note running through the consultants’ papers to the effect that our enforcement-oriented approach to drug problems has caused their expansion more than their limitation and control, this cue is taken up nowhere in the drug report by the Commission itself. Similarly, it is disappointing that a commission on law enforcement should devote so little consideration to narcotics law enforcement practices, as such. Again, there are passing references in the appended advisory papers to the ethically and legally questionable nature of typical enforcement techniques as well as to the question of relative dispositions of enforcement resources, but on these matters, too, the Commission is essentially silent. It refers to the use of informers (“informants”) as “standard and essential,” asserts that “There are persuasive reasons to believe that enforcement of these laws has caused a significant reduction in the flow of these drugs,” and recommends substantial increases in enforcement staff.

Herbert Packer has criticized the Commission for failing to grapple with the central issue of the functions and place of the criminal law in modern society. While it may be too much to insist that such a commission should elaborate a sophisticated theory of the criminal law, it is difficult not to conclude that some attempt by the Commission at developing a coherent sense of its own operating conception of the role of criminal sanctions (as, for example, the Wolfenden Committee attempted to do in its report) might have led to a more direct confronting of key policy questions—at least in the area of drug control. As it is, the Commission appears invariably to place the burden of argument and evidence on those who would modify existing drug laws and practices, rather than requiring adequate justification by those who favor maintenance of criminal law intervention. The Commission was, of course, entitled to take this view, but if it meant to adopt such an operating premise, the decision to do so should have been made explicit. Undoubtedly it was the case that, as a matter of fact, no such “decision” could have been reached—owing to significant lack of consensus on this matter among the members of the Commission. In this connection, it is noteworthy that four members (Brewster, Breitel, Stuart, and Young) dissented strongly from the majority statement on drug problems.<sup>1</sup> Their comments (which can be presented here only in part) serve both as an epitaph on the work of the Commission in this area, and as an indication of the kind of approach that might have been applied had their views and those of the consultants prevailed:

*. . . we feel compelled to note that the Commission has not confronted many major unanswered questions about narcotics and dangerous drugs. . . . Many persons concerned with the problem have for years been questioning whether the criminalization of narcotics and marihuana distribution has not served to defeat the objective of controlling and perhaps eliminating drug abuse and the crime associated with it. . . .*

*In this important area the Commission has been unable to face the fundamental questions. Instead, for reasons that are quite understandable but in our view not justifiable, it assumes that the laws and the traditional methods of enforcement which have ob-*

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1. The dissent is published as an *Additional View*, in *THE CHALLENGE OF CRIME IN A FREE SOCIETY* at 302-3 (1967).

*tained for over 50 years, are the only proper ways in which to meet the problem. . . .*

*. . . we are convinced that the time must come when this Nation will have to consider from entirely new and unbiased viewpoints, the associated but distinguishable problems involving narcotics, marihuana, hallucinogens, and other dangerous drugs. The time will come when we will have to determine causal relations and consider the possibility that traditional methods of law enforcement produce more rather than less crime, particularly of a collateral character. . . .*

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