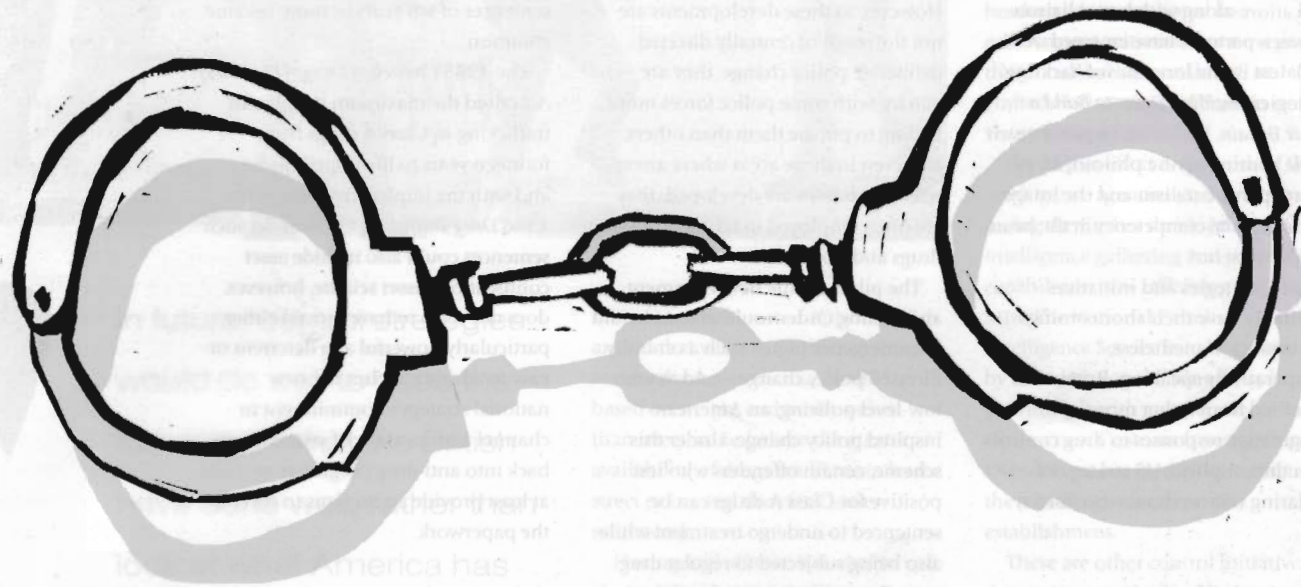


Maggy Lee, Nigel South

## Law and order



**Almost uniquely in the western world, the history of drug control in Britain has a tense fascination. The tension lies in the development of control policies which have generally sought – explicitly – to balance treatment with enforcement. Policy has usually been shaped with sufficient spirit of compromise and moderation to ensure that we have avoided some of the worst problems faced elsewhere, most notoriously in the United States.**

**A**t the same time, until the 1960s, the basis for this enviable state of affairs was fairly easily achieved in a society with virtually no drug problem. Hence, from the 1920s to the early 1960s, all the significant drug legislation passed in Britain was less a response to drug use or trade as a genuine domestic issue, and more the result of a 'nation at ease' with its liberal tradition as well as a willingness to meet (and sometimes exceed) national obligations set by international treaties.<sup>1</sup> The 1960s, however, brought a change to this reassuring assessment of the domestic scene as drugs emerged as a new 'social problem'.

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### **The permissive society?**

Out of the official debates on drugs and control that followed, there emerged – for really the first time – a definitional parting of the ways, not only between 'soft' and 'hard' drugs but also between 'users' and 'dealers'. This categorisation was reflected in 1971's *Misuse of Drugs Act* which made an important distinction between possession offences and supply offences. Drug users could be characterised as 'sad' (and therefore in need of treatment) and dealers as 'bad' (and therefore deserving severe punishment).

Interestingly then, drugs received legislative attention that ran counter to the liberalism of many legislative developments in these 'permissive' years (such as the laws on abortion, gambling and homosexuality). Even the advice of the Advisory Council on Drug Dependence (the forerunner of the ACMD) was dismissed without serious consideration, with the upshot that the thorny issue of the legalisation

of cannabis has run and run without resolution ever since.<sup>2</sup>

### **A very British affair**

As for the 1980s fad of viewing drug control as a war which had to be won, although the rhetoric was imported directly from the America of Nixon and Reagan, the reality was a much more home-grown affair. While 'tough enforcement priorities' have frequently led the agenda of governments, the tradition of compromise has nonetheless been maintained in criminal justice, health, and social policy responses. For instance, the government's pre-TDT 'strategy' for the mid-eighties, *Tackling Drug Misuse*, proposed five fronts for action, largely organised around enforcement.<sup>3</sup> But although the document was tellingly produced under the auspices of the Home Office, it has to be credited as one of the first international acceptances – if not outright embraces – of harm reduction in relation to prevention and treatment.

As for the more recent strategies, 1995's *Tackling Drugs Together* underlined the importance of community crime prevention while also emphasising the need for multi-agency partnerships and the limitation of drug-related damage to communities.<sup>4</sup> That strategy's inter-connecting framework of the Drugs Prevention Initiative, Drugs Prevention Teams, Drug Reference Groups and Drugs Action Teams has created new spaces in which new approaches to prevention and education, along with better liaison between partners have emerged. And the latest in the long line of 'tackling' strategies, *Tackling Drugs to Build a Better Britain*, builds on its predecessor while shoring up the philosophy of interdepartmentalism and the image of managerial competency at the heart of government.

Such strategies and initiatives inevitably have their shortcomings and critics – nonetheless, comparatively speaking, Britain has benefited from rather more imaginative responses to drug control than the simplistic US strategy of declaring war on those who *Just Say Yes*.

#### **Buzzword city**

Of course, a possible pitfall of imaginative responses is that they can become the victims of fashion. Currently, there are two main areas where the soundbite and buzzword play important roles in enforcement: policing and sentencing.

At the street level of enforcement, various police commentators and strategy documents have supported the idea of 'low level policing' aimed at disrupting street markets. For example, many police and non-police agencies have set up 'drug-free zones', installing closed-circuit television cameras, creating well-lit environments and mounting high-profile anti-drug operations to tackle open, visible drug markets.

On the positive side, the official acknowledgement of 'drug problem areas' may prompt local councils, health authorities and other social agencies to tackle some of the most obvious signs of urban deprivation. However, there is also the buzzword danger that recent developments could pave the way for uncompromising,

New York-style 'zero tolerance' policing, the impact of which on inner city communities (especially young-black males) has been the subject of heated debate in the United States.

Low level policing has also involved diverting drug offenders away from the criminal justice system towards less formal interventions. In some areas, the setting up of arrest referral schemes has led to better relationships between the police and drug agencies, and such schemes have certainly been found to be cost effective if nothing else.<sup>5</sup> However, as these developments are not the result of centrally directed deliberate policy change, they are patchy, with some police forces more willing to pursue them than others, and even in those areas where arrest referral schemes are developed, they are often employed in relation to some drugs and not others.

The pilots for the new Treatment and Testing Order could at least herald the emergence of just such a centrally directed policy change – and as with low-level policing, an American-inspired policy change. Under this scheme, certain offenders who test positive for Class A drugs can be sentenced to undergo treatment while also being subjected to regular drug tests. But unlike arrest referral or cautioning schemes, the new Order bites at a later stage in the offender's 'relationship' with the criminal justice system – after sentencing.

#### **Sentence structure**

Several critics have commented on the continuous rise in the levels of both minimum and maximum drug sentences, a rise which seems to conflict with the desirable policy goal of *reducing* the use of custody. With Michael Howard in the Home Office, the Major government was clearly not going to view a reduction in the use of custody as a worthwhile goal, but there are also few signs that the new Labour government thinks very differently. Yet for serious drug users with housing, employment and other problems, a prison sentence is unlikely to be effective either in providing treatment or in helping to resolve their problems upon release.

Custodial sentences have risen most particularly in relation to offenders involved in substantial or repeated dealing. In 1972 (before the *Misuse of*

*Drugs Act* had come into effect) sentences tended to be between six months and two years. By 1976, when the Act had been in operation for three years, the number of people receiving a prison sentence had roughly doubled in comparison with 1972, and of these the majority received sentences of between six months and three years. In 1983, the Lord Chief Justice proposed a raised tariff, which was amended upwards in 1987 as a result of the case of the Crown against Bilinski. In practice, this meant that sentences of ten years or more became common.

The 1985 *Controlled Drugs (Penalties) Act* raised the maximum penalty for trafficking in Class A drugs from fourteen years to life imprisonment and with the implementation of the 1986 *Drug Trafficking Offences Act* such sentences could also include asset confiscation. Asset seizure, however, does not seem to have proved either particularly powerful as a deterrent or easy to administer, but the new national strategy's commitment to channel a proportion of seized assets back into anti-drug programmes could at least provide an impetus to sort out the paperwork.



While 'tough enforcement priorities' have frequently led government agendas, the tradition of compromise has nonetheless been maintained in criminal justice policy responses

#### **Locking the stable door . . .**

The overall trend towards the *availability* of higher penalties has continued throughout the 1990s (as with the drugs themselves, there is a real distinction between 'availability' and 'use', which will be touched on later). The 1991 *Criminal Justice Act* introduced further penalties for trafficking and created the new (but, until recently, underused) condition of treatment for drug dependence



In future, control strategies would do well to heed the lessons of what the British have done well, rather than look at what America has done badly

attached to a probation order. The 1993 *Criminal Justice Act* extended confiscation orders, while broad provisions of the 1994 *Criminal Justice and Public Order Act* affected drug users (including those in prison) and ravers. And the 1997 *Crime (Sentences) Act* introduced a mandatory minimum seven year sentence for drug traffickers convicted for a third time.

Sentencing guidelines for the courts have already been amended post-

Bilinski by the Court of Appeal, which argued that when quantities of drugs are involved, sentencing should be based on weight and purity rather than street value (where the greater availability of drugs could mean lower street prices and therefore lower sentences).

Having said all this, it is vital to always bear in mind the distinction between sentence *availability* and sentence *use*, and this is an area where a decentralised police force and independent judiciary come into their own. For despite the almost annual rises in sentencing possibilities, the sentencing reality is quite different. In 1996, for instance, the proportion of drug offenders sentenced to immediate custody varied dramatically from police force area to area – from nearly one in four in Northern Ireland (24 per cent) to two per cent in the Northern force area of Scotland.<sup>6</sup> And even in London, where a quarter of the UK's drug offenders were dealt with, only five per cent (under 1200 people) were sentenced to immediate custody. Across the nation as a whole, only nine per cent went straight from court to prison – and of those, only six per cent (just over 500 people) were given sentences of over five years. In fact, the average 'drug' sentence length between 1994 and 1996 was lower than for any year since the year of the Bilinski case. In the intervening time, it is not difficult to find out what happened to

most drug offenders: in 1987, 24 per cent were cautioned; in 1996, 51 per cent were. It is highly likely – indeed probable – that the new Treatment and Testing Order will increase the proportion dealt with outside the prison system at the same time as penalties are increased in the eyes of the law.

#### Controlling the future

Enforcement continues to be a highflyer on the agendas of European and other international bodies. Cross-border and international law enforcement initiatives are now part of the globalised 'war on drugs', as 1998's United Nations Special Session on Drugs proved.

Key to this effort is the work of the intelligence agencies. At home, we are seeing the further development of intelligence gathering and processing capabilities, now involving MI5 and MI6. The National Criminal Intelligence Service is to be partnered by a new National Crime Squad, providing it with an operational arm, while a new Customs Investigation Department has further strengthened the anti-drug enforcement establishment.

There are other control initiatives in the air. New methods of drug testing are being applied in many different areas – the home, workplace, roadside, police cell and prison. The new *Crime and Disorder Act* makes arrangements for police and local authorities to work closely together on public safety strategies, inevitably including action on drugs. And no doubt we will hear and see more of specifically tasked 'drug courts'.<sup>7</sup>

Overall, drug enforcement and other criminal justice policies must confront the growing belief that the 'war on drugs' is not one that can be won. Indeed, there is now a serious debate as to whether drug use has become 'normalised' in British society.<sup>8</sup> Whatever the verdict on this proposition, it is certainly hard to argue that drug use today is 'exceptional' in the way it was 30 or so years ago. Whatever the 21st century brings, it will not be a return to a Britain without drug problems. In the future, control strategies would do well to heed the lessons of what the British have done well, rather than look at what America has done badly ■

1. Shapiro H. "What's in a sausage? The roots of cannabis prohibition." *Druglink*: 1998, 13(5), p.10-13.  
 2. Advisory Council on Drug Dependence. *Cannabis* [also known as *The Wootton Report*]. HMSO, 1968.  
 3. *Tackling Drug Misuse: a Summary of the Government's Strategy*. Home Office, 1985.  
 4. *Tackling Drugs Together*. HMSO, 1995.  
 5. Edmunds M. et al. *Arrest Referral: Emerging Lessons from Research*. Home Office, 1998.  
 6. Corkery L. *Statistics of Drug Seizures and Offenders Dealt With, United Kingdom, 1996. Area Tables*. Home Office, 1998.  
 7. Benn P. "New ideas in the field." *Druglink*: 1997, 12(2), p.12-14.  
 8. South N (ed). *Drugs: Cultures, Controls and Everyday Life*. London: Sage, 1998.