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The Heroin Solution

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THE HEROIN SOLUTION. By *Arnold S. Trebach.* New Haven, Conn.: Yale University Press. 1982. Pp. xvi, 320. $24.95.

In America, only criminals take heroin. The mere possession of heroin is criminal without exception, and so even doctors who would use it for legitimate medical purposes cannot do so. The terribly high black-market prices resulting from criminalization force addicts to steal in order to buy the drug, and so America is afflicted with a second level of illegality — drug-related crime. In *The Heroin Solution,* Arnold S. Trebach argues persuasively that neither of these results of heroin's criminalization should be tolerated any longer. He concludes that the United States, by making heroin a legal prescription drug as it

has long been in Britain, could avoid these results by eliminating their cause.

Much has been written on the addiction problem in the United States, but *The Heroin Solution* takes a somewhat different approach than most books on the topic. It is something of a guided tour through Professor Trebach's extensive knowledge of the subject, with his doubts candidly pointed out along the way to his conclusions. Trebach is a professor at the School of Justice of The American University in Washington, D.C. In 1974, he organized the American University's Institute on Drugs, Crime, and Justice in London, and he remains its director. In his book, he moves freely back and forth across the Atlantic, from scholarly references to his own conversations with drug experts, to brief surveys of scientific studies, to personal stories that sometimes border on the sensational. The reader comes away with an appreciation of the tremendous diversity of opinion about heroin, and a massive sense of frustration at the inconclusiveness of the scientific evidence about the drug. But by relating his own appreciation of the complexity of these issues, Trebach also imparts a sense of the soundness of his conclusions about the problem and its possible solutions. He suggests that those who would compare the heroin situation in England to that in the United States "must ultimately make independent judgments based on a review of as much of the original evidence as possible" (p. 87). This is also what he offers his readers: a huge body of scientific and historical information and a way of interpreting it so that an approach often dismissed as preposterous looks worthy of a very close second look.

After establishing that heroin addiction is a serious and worsening problem in most of the world, Trebach turns to a subject seldom considered in popular discussion of heroin legalization: the medical use of heroin to treat pain. British doctors routinely use heroin to treat burn and heart-attack victims and, most dramatically, cancer patients. The conventional American wisdom has been that heroin has no unique advantage over morphine in the treatment of organic disease. The scientific results are contradictory, but Trebach presents enough subjective impressions by doctors to convince the reader that the United States may well be sacrificing medical benefits that, in some situations and for some patients, only heroin can provide.[1]

In light of the British experience, most thoughtful commentators would concede that there is no medical reason why heroin should be

1. In April of 1984, the House Committee on Energy and Commerce reported favorably on a bill that would set up a four-year trial during which heroin would be made available to certain hospital and hospice pharmacies and during which doctors would be permitted to prescribe it for terminally ill cancer patients only. Professor Trebach was one of eight individuals testifying on the bill before the Subcommittee on Health and the Environment. *See* House Comm. on Energy and Commerce, Report to Accompany H.R. 5290, the Compassionate Pain Relief Act, H.R. Rep. No. 689, 98th Cong., 2d Sess. (1984).

totally unavailable for the treatment of organic disease. Although a few fatuous physicians can always be found who will decry the administration of heroin to terminal cancer patients because of its addictive potential, Trebach recognizes that the truly hard questions concern the use of heroin to treat addiction itself. It is to the differences between Britain and America in this regard that he devotes the majority of the book.

Starting from very similar beginnings around the turn of the century, Britain and America soon took radically different approaches to the regulation of heroin. Trebach starts by examining the development of what is usually referred to as the "British system," and his message is that it is not a "system" at all. More accurately, it is not the centrally-run, top-down bureaucracy that Americans accustomed to hearing about British addict registration and socialized medicine often expect. Instead, the traditional British approach has been to leave the power to prescribe heroin entirely within the discretion of individual doctors. Heroin addiction is considered more a medical problem than a legal one, and it is for an addict's doctor to decide how to treat him. Until recently, doctors could administer other drugs (including morphine), wean addicts with gradually diminishing doses of heroin, or maintain them on stable doses of inexpensive, pure heroin for the rest of their lives.[2] Although in recent years British doctors have seemed less likely to choose to treat addicts with heroin, British law still requires only that doctors who do prescribe heroin or cocaine to addicts for treatment of their addiction (but not for treatment of organic illness) be specially licensed. The British government does not dispense drugs, and addicts have never been "registered." Until recently, private doctors wrote heroin prescriptions entirely free from official second-guessing and the fear of prosecution. And until it was made mandatory in 1968, doctors "notified" addicts to the Home Office only as a matter of courtesy;[3] the chief use of the information still seems to be in compiling the most detailed and complete set of addiction statistics anywhere.

The American system, on the other hand, is a "system" in the grandest bureaucratic tradition. From the time the Harrison Act[4] was passed in 1914 to restrict the use of narcotics to doctors in the course of their professional practice, the American medical establishment has maintained that there is no legitimate need to use heroin in the practice of medicine. Instead of fighting for the right to make private medical judgments, as did their British counterparts, most American

2. The British have always considered the "cold-turkey" sudden-withdrawal method, a hallmark of American "treatment" as early as 1926, to be inhumane. P. 91.

3. Although notification was made mandatory in 1968, it still carries no legal consequences for the addict.

4. Harrison Narcotic Act, Pub. L. No. 63-223, 38 Stat. 785 (1914).

doctors supported the efforts of Treasury officials[5] who gradually regulated away most of the discretion American doctors had regarding the use of heroin. Legal heroin was virtually unavailable in America after 1924, and the drug was outlawed entirely in 1956.

Trebach's meticulous argument is probably unnecessary to convince most readers that the American approach to heroin addiction has failed. Huge expenditures on enforcement and on methadone maintenance programs have proved only that most addicts prefer heroin to methadone and that the black market will find ways to satisfy this demand at any cost.[6] Looking for a solution, Trebach finds that the British approach has, at least until recent years,[7] held addiction levels stable and largely removed the impetus to heroin-related crime. Meanwhile, on this side of the Atlantic the growing size of federal drug busts has been matched, perversely, only by the growing number of heroin addicts.

Trebach's recommendation is that America follow the British model, legalizing heroin for medical treatment and keeping the state out of the business of deciding what is legitimate medical treatment and what is not. As an example of this approach in America, he holds up the Shreveport clinic of Dr. Willis Butler, who used opiates successfully to treat both organic disease and addiction from 1919 to 1923. Indeed, if it worked here until the government intervened, and worked in Britain for over forty years, why not go back to this approach? Professor Trebach builds a compelling historical argument for the superiority of legalization. Unfortunately, his careful research also reveals that British practice today is changing. The legal structure there is narrowing the scope of doctors' previously unquestioned discretion but, perhaps more significantly, British doctors are also voluntarily abandoning their previous approach in favor of a very American-looking system.

Beginning around 1960, the British addiction picture started to change. The previously stable addict population began to grow, and the new addicts resembled American addicts — young, deviant, and

5. The Harrison Act was passed as a tax measure in an era when federal power to regulate was limited. Trebach notes that several writers, apparently unaccustomed to the convolutions of constitutional interpretation, have concluded that the statute was intended by Congress "as a revenue and record-keeping measure and nothing more," and was later used by the federal bureaucracy "for its own ends." P. 119. Trebach's careful review of the legislative history leaves no doubt that if Congress could have simply outlawed heroin in 1914 as they did in 1956, they would have.

6. Even authors who stop short of Trebach's radical proposals agree with his description of the present system's shortcomings. *See, e.g.*, J. KAPLAN, THE HARDEST DRUG: HEROIN AND PUBLIC POLICY (1983) (reviewed at 82 MICH. L. REV. 1032 (1984)). Kaplan concludes that there are too many practical problems with heroin maintenance. He recognizes the poor record methadone maintenance has had, but suggests that the answer is expanded methadone programs with coerced attendance.

7. *See* text at note 8 *infra*.

poor — more closely than the traditional British addict, who was often an older person who had become addicted through medical treatment rather than through recreational use. In response, most British doctors were forbidden to prescribe heroin for the treatment of addiction.[8] Private doctors can still prescribe heroin for the treatment of organic illness, and may still administer morphine, methadone, or other narcotics to addicts. But only specially licensed physicians, found almost exclusively in drug-treatment clinics, are permitted to treat addicts with heroin. Increased regulation, however, is by no means the only change. Rather than use their power to continue longstanding practice, these clinic doctors have moved away from prescribing injectables such as heroin, and instead are using oral methadone almost exclusively.

The new British approach, like the old American approach on which it is based, does not appear to have solved the problem. Trebach does not suggest that this "proves" the efficacy of the approach that worked for so long before the British discarded it. He admits that the evidence is unclear; in fact, the chapter on Britain today is entitled "Doubt and Uncertainty" (p. 171). As with the other controversial issues in the book, his approach to the British change of heart is to lay out the history of the change and survey the views on both sides of the issue. But, for the first time in the book, Professor Trebach's approach backfires here; as the title indicates, the reader is left dubious and uncertain. The facts are simple enough, but Trebach makes little attempt to sort out cause from effect, or to address the sociological factors influencing the change. How much of the medical and legal attitude shift is due to the sudden change in the type of addict showing up for treatment? How much of the failure of the new British approach is due to the change in legal regulations, how much to the new treatment methods, and how much to the change in the addicts themselves? Significantly, the Shreveport clinic that serves as Trebach's model for the future treated a clientele very different from the urban addicts who form the majority of modern heroin addicts in America.[9] If the British/Shreveport approach does not work with these addicts, either because societal attitudes will not allow it to work or because there is something fundamentally different about the addicts themselves, then Professor Trebach's proposal for the future is neither politically practicable nor socially desirable.

The Heroin Solution lays a thorough groundwork for future discus-

8. At least one author has argued that the change came in response to the new type of addict rather than to the increased number of addicts. *See* P. BEAN, THE SOCIAL CONTROL OF DRUGS 113 (1974). For a very detailed treatment of the recent British experience, see DRUG PROBLEMS IN BRITAIN: A REVIEW OF TEN YEARS (G. Edwards & C. Busch eds. 1981).

9. *See* p. 150. Recent work has shown the importance of addict type to the success of methadone-maintenance programs. *See, e.g.*, D. BELLIS, HEROIN AND POLITICIANS: THE FAILURE OF PUBLIC POLICY TO CONTROL ADDICTION IN AMERICA (1981).

sion of heroin maintenance. It brings to the dialogue some ideas that laymen, politicians and physicians have generally not considered worthy of discussion. For instance, consider one British doctor's objection to injectable heroin maintenance: "once injecting starts, many addicts might be tempted to try other, more destructive drugs" (p. 204). Americans may have a hard time picturing heroin as a stepping stone to hard drugs. But if we are to fashion a more successful response to heroin addiction, we should start looking more closely at the knowledge of the doctors and lawmakers of a nation with far more experience in the matter than we have.

Before America adopts anything like the British model of treating addicts with doctor-prescribed heroin, we should first be very sure we understand the implications of the changes that have occurred in that model over the past twenty years. At the same time, the evidence is much more convincing on heroin's role in the treatment of organic illness; that issue can and should be dealt with separately. With Professor Trebach's help, a start has been made in arguing that both the organically ill and the addict should have access to prescription heroin. But above all, *The Heroin Solution* is a balanced, exhaustively researched contribution to the literature of heroin addiction and its treatment.