

invasion of private bodily functions is the perfect symbol of drug prohibition, the logical conclusion of the subordination of the individual to a failed policy. We are not going to be drug-free, just unfree. □

REAGANITES AT RISK

Richard Vigilante

PHIL CRANE hasn't been heard from much over the past six years. For most of the 1970s he was one of the two or three best-known movement conservatives in the House of Representatives. In 1980 Crane was eminent enough to be a fallback presidential candidate in case Reagan faltered. Indeed, the gossip on the eclipse of Crane's career in the Reagan years is that he took his own 1980 run for the nomination a bit too seriously for the tastes of the Reagan people.

He was heard from again this September when the national press noted that he was the only Republican congressman to vote against the House Omnibus Drug Bill before it was sent to the Senate. If it is ambition that makes our politicians cowards, perhaps ambition denied has the opposite effect. Crane, explaining his vote later, made the obvious and sensible point: Since drug abuse "cannot be eliminated from society," it is bad policy to "spend \$6 billion, cut corners on civil liberties, and expand the power of government in ways that we might regret later," in pursuit of an unattainable goal.

In the House debates, people who took that position were denounced as irresponsible drug symps who took abstractions like federalism and civil liberties and the excessive size and power of government more seriously than the lives of children. Rough stuff. Not too surprising, either, given the bad name civil libertarians have given civil liberties. For the past few decades, every time some municipality has shut down a LIVE ON STAGE! SEX SHOW, or allowed a crèche in a public park, or tried to forbid American Nazis from harassing people who outlived the German variety, or suggested that parents be consulted before their children are retrofitted for free love, some civil libertarian has shown up to cry wolf at the top of his lungs. It becomes easy to dismiss charges of "Police state!"

Nevertheless, Crane was right. Most conservative politicians have behaved irresponsibly on the drug issue, panicking in the face of a media-created crisis, attempting to expand government powers to do for the reckless what they might refuse to do for the poor: protect them from themselves. But though their behavior has been slavishly political, in the long run it may be impolitic. The drug war

as it is being waged now violates not merely the abstract symbols of civil liberties beloved of left-wing intellectuals; it violates genuinely important rights in ways Americans have not in the past been disposed to tolerate.

The last drug scare comparable to this one started back in the 1960s and was fused in the public mind with the generation gap, hippies, draft dodgers, cheap sex, revolutionaries, and all the other forces that threatened the fabric of decent society. For a time at least, it was possible to believe drug users as well as drug dealers were the enemy. They were suspect victims, seduced to the dark side, to be feared and fought as well as pitied. It was in this atmosphere that possession of a single marijuana cigarette could earn an 18-year-old ten years in a Texas prison. As late as 1972, *NR* senior editor Jeffrey Hart could write that we ought to keep marijuana illegal because the drug laws were a good weapon against the counterculture. Popular opinion was already swinging the other way, but Hart articulated perfectly the view that had made the drug crackdown a conservative cause in those contentious days.

Punishing users eventually became an insupportable position. Eventually everybody knew some "good kids" who had been busted; it was impossible to think of them as the enemy. It became impossible as well to imagine that an arrest record or a few months in prison would do them less harm than a little dope. Most people still hated the idea of kids or anybody else using drugs, and the evidence of their harmfulness continued to mount. But the price of punishing users seemed too high, and by and large the country gave up on that tactic. In New York, marijuana was decriminalized in 1977, just four years after the Rockefeller drug laws, which, enacted as the drug panic had passed its peak, prescribed up to 15 years' imprisonment for possession of one ounce of marijuana and six years to life for possession of small amounts of narcotics.

In the decade since, the war against drugs has been fought on the supply side, with enforcement efforts focusing on major dealers. As Richard Cowan points out, such high-level enforcement raises profit margins and also favors the most organized dealers, such as the Mafia. Concentrating police resources on glamor prosecutions wherein the defendants can offer millions in bribe money guarantees widespread corruption. And, of course, the supply-side tactics proved to be utterly ineffective. It is impossible, in a free society, to catch any significant percentage of wholesale couriers, who can pick their time and place of entry into the country and then move about with utter freedom once they are here. Though there have been dozens of huge, well-publicized drug busts and enforcement campaigns, yielding billions in confiscated drugs, these campaigns have had no sustained impact on drug abuse. The *French Connection* heroin was stolen, by police, out of an evidence locker and sold on the street.

Everyone knows this. You can curb drug use only by punishing users as well as dealers—the incentives to use drugs are lower than the incentives to sell them. Singapore shoots dealers and flogs users, and has no drug problem. Criminologists have demonstrated that, on the average, arresting even heroin users significantly deters their future drug use. But if you sensibly decide that punishing users is too high a price to pay, you have to forget about win-

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ning the drug war through enforcement. This is what the country began to concede as the Sixties came to a close.

What has happened in the latest panic is that we have forgotten these hard-learned lessons. We have decided once again to make curbing drug use a major government objective, and in the best management-by-objective style we have chosen to ignore the impediments. No one *decided* to go after users again; had the question been posed so explicitly the new drug crusade might never have gotten off the ground. But the necessity is unavoidable. If you decide to fight a major drug war you are going to have to go after users no matter how loudly you proclaim them victims. That is exactly what is happening.

The centerpiece of user harassment is the drug-testing craze. To his credit, Ronald Reagan shot down proposals from the Justice Department and the office of Personnel Management for wholesale compulsory testing of federal employees. Nevertheless, some federal employees will be tested simply because they hold sensitive or safety-related jobs, even if their behavior on the job is exemplary. Indeed, the government has helped establish a public consensus that not testing in such cases would be irresponsible.

It is easy to see how people would take such a position; it is an easy line to step over. Employment is voluntary, and employees already allow employers to violate their privacy in lots of ways. But drug use is a crime; we have a long tradition of forbidding arbitrary searches where crimes are suspected, of presuming innocence where there is no specific evidence of wrongdoing, and of not forcing people to procure evidence against themselves. Employers aren't police, so drug testing is clearly not a violation of the Fourth and Fifth Amendments. But the Fourth and Fifth Amendments not only prescribe government actions, they help describe a free society. The presumption of innocence is as important a social rule as it is a legal rule; nor do we want a society whose members have so little sense of self that assertions of privacy are generally regarded as either eccentric or guilty.

These are not considerations of absolute importance, but they are important enough that we should not dismiss them without good reason. It is rhetorically effective to say that we cannot afford a single air-traffic controller on drugs and therefore we must test them all, even if their performance indicates their innocence. But there is no reason to believe drug use among air-traffic controllers has reached dangerous proportions—no major crash has been linked to drug use. Thus when we compromise what the air-traffic controllers, like most Americans, regard as their traditional rights, we get for that violation no more than an insignificant increase in public confidence and probably no increase in public safety.

Universal testing in sensitive occupations is the hardest case. Yet the Federal Government is encouraging even wid-

er testing. It has promoted the utterly false notion that drug abuse is on the increase and has reached crisis proportions. It has authorized agency heads to require certain federal contractors to test their employees. And it has offered assistance to private employers who wish to do tests. The President and his Cabinet members all had their urine tested. Big business, whose professional managers may be the most fashion-conscious group in the nation, has jumped on the bandwagon. Worst of all, a clear majority of Americans favors widespread testing.

If we are to believe the anti-drug crusaders, more than thirty million Americans now use illegal drugs at least occasionally. According to the crusaders' own figures, few of these people are habitual or abusive users, and most use nothing more powerful than marijuana (which shows up better than any other illegal drug in the urine tests). Society has no interest in doling out significant punishments to casual users; we learned that last time. Even if we are convinced that we need to keep drug use a crime, the casual users are the guilty ones we want to get away. They walk like responsible citizens, talk like responsible citizens, and do their jobs like responsible citizens; if they didn't, we would not need drug tests to find them out.

Furthermore, drug tests cannot distinguish between casual use and habitual abuse. Thus even if the results of employee tests are shielded from police scrutiny, these perfectly decent citizens face significant harm, including loss of livelihood and reputation, should drug testing become widespread. Punishing these people to that extent will do more harm both to them and to society than leaving them alone. This is exactly what should be expected when we start looking so hard for criminals that we find them even though we can detect no effects of their crime.

For these reasons, drug testing and other intrusive enforcement measures will not long be tolerated if they are ever widely employed. The baby-boomers in particular, who now make up the bulk of the workforce, will not tolerate in their thirties and forties harassment they rejected in their teens and twenties. Even those who do not use drugs will reject the notion that their friends should lose their jobs because of a minor indulgence.

For six years the Left has been screaming that Ronald Reagan and his right-wing allies are a threat to freedom. The screaming has had little effect because up till now the charge has been absurd. On the whole, the Reagan agenda tends toward a freer society, especially for people who rank the importance of various freedoms differently from the way left-wing intellectuals do. But a political movement that proposes to make outcasts of thirty million citizens has poor long-term prospects. What for a few months looked like a bandwagon may end up being an overstuffed tumbrel.

Embracing the drug hysteria requires a rejection of c

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sential conservative principles. In a democratic society, the crucial psychological step in justifying coercion is to become convinced that those who are to be coerced lack the judgment to make minimally sensible decisions about their own welfare. Since this is an ability nearly all people feel they have, those who are to be coerced must be alleged to be unlike us, by virtue either of their abilities or of their circumstances. Yet democracy depends on a formal commitment to regarding our fellow citizens as equals with us in their rights to govern themselves—except in the face of powerful and specific evidence to the contrary. This is the essence of the rule of law. The welfare state, for instance, corrupts democracy and corrodes the rule of law precisely by judging that tens of millions of citizens, with nothing in common but the modesty of their means, should have their lives arranged for them by the poverty warriors.

This same corrosive assertion is crucial to the drug war. Only serious drug addicts, a small percentage of all who use illegal drugs, can be said to be incapable of self-governance. Yet nearly all drug users are implicitly alleged by the crusaders to have surrendered their free wills. The most repulsive instance of this is the tendency of the media to treat millionaire playboy cocaine addicts as victims, as if addiction were a natural catastrophe that befalls the helpless rather than the result of self-indulgence. Similarly, the media tell us that crack is an "epidemic" that "invaded" the ghetto, as if the drug were an insidious agent with a will of its own, ruining otherwise stable and happy lives. Surely it is more likely that crack found a home in the

ghetto because it is mostly used by people who take more risks because they have less to lose. It is true that the ghetto poor are in some sense victims, both of racism and of government policies that seek to make them dependents rather than citizens. But to imply that they are utter victims, passive objects of passing plagues, is to surrender to the worst and most elitist fallacies of the welfare state.

The image of drug abuse as unwilling catastrophe provides an excuse for ignoring real social crises. The catastrophe model begs the question of why people are willing to overcome great obstacles of cost and risk to use drugs. The anti-drug crusaders aren't surprised by drug abuse, because they have stopped thinking of users as free agents. But we ought to be surprised. We might find part of the explanation in a divorce rate that left more than one million children in broken homes last year, or in the fact that more than half of American children come from homes in which both parents work. And let's not forget the neuroses of a generation that was persuaded that self-fulfillment was not only a right but a solemn duty. If the good life consists of a succession of personal highs, who can blame the temporarily unthrilled for getting a little chemical help?

If we think about the drug problem in this way, rather than using it as a scapegoat for our larger problems, we will find that we are thinking about ourselves as we really are, not about users and dealers as we imagine them to be, utterly unlike ourselves. That's a lot harder than "declaring war on crack," but it's more honest and it will do a lot more good. □

