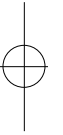
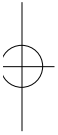
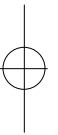
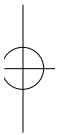


Drugs, Addiction, and the Law





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Policy, Politics, and Public Health

Peter J. Cohen, MD, JD

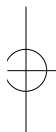
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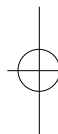
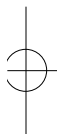
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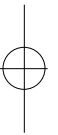
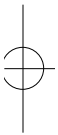
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To My Wonderful Family

Cynthia
Holly, Ward, Alec
Beth, Kevin, Mateo, Connor
Chris, Marjorie, Jonathan, Daniel, Sarah





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Preface

And the Lord God commanded the man, “You may freely eat of every tree of the garden; but of the tree of the knowledge of good and evil you shall not eat, for in the day that you eat of it you shall die.”

—Genesis 2: 16–17

Sherlock Holmes took his bottle from the corner of the mantelpiece, and his hypodermic syringe from its neat morocco case. With his long, white, nervous fingers he adjusted the delicate needle, and rolled back his left shirt-cuff. For some little time his eyes rested thoughtfully upon the sinewy forearm and wrist, all dotted and scarred with innumerable puncture-marks. Finally, he thrust down the tiny piston, and sank back into the velvet-lined arm-chair with a long sigh of satisfaction.

—SIR ARTHUR CONAN DOYLE, *The Sign of the Four*, in THE ANNOTATED SHERLOCK HOLMES 610 (William S. Baring-Gould, Ed, Wings Books, New York, Avenel, New Jersey, 1992).

The use and abuse of psychoactive (mind-altering) drugs is an integral part of the human experience. Society has long viewed these activities through many eyes: criminal activity, moral failing, illness and disability, or the exercise of individual or religious expression. Nonetheless, whether the drugs involved are “legal” or “illicit,” these compounds may represent a major public health hazard.

This book will discuss the significant legal, ethical, and policy considerations faced by society as it deals with drug use. A recurrent theme will be the need to balance individual liberty and autonomy with the needs of society. This has lead to several models, none of which is completely satisfying and all of which raise important questions.

A philosophy with total respect for both autonomy and responsibility would ignore the use of any drug but take action against harmful drug-related behavior. If this approach is followed, will “pathologic” drug use be considered a medical problem or criminal activity? Will society’s answer be treatment or incarceration? In either case, how will those rights inherent in a democratic society be maintained?

A public health model weighs the risks (both to society and the individual) of allowing unrestricted drug use and the burdens (again, both to society and the individual) of prohibiting or regulating it. How can we measure accurately the harms that result from drug-use itself rather than the illegality of such activity? Should society engage in civil commitment (as opposed to criminal incarceration) as a response to a perceived public health problem and, if so, how can we measure the efficacy of such action? Are criminal penalties justified within the discipline of public health? What is the role of education

and treatment within the public health paradigm? Should those who suffer from the pathologic effects of illegal drug use be considered disabled or just bad people?

Finally, is the threat of some drugs so significant that society is justified in approaching it from a criminal justice perspective? If this philosophy is adopted, will there be any limits to the criminal justice system? Is it possible to impose punishment that is appropriate, effective and fair? Does society have unlimited options when confronted with a perceived, or actual, threat? Or, are there constitutional safeguards and limits in this emotionally laden area of societal concern?

Each of these perspectives raises contentious questions. I will attempt to minimize personal bias but, instead, will propose questions (with conflicting answers) that warrant careful consideration.

The response of our laws to “illegal” drugs is not an isolated phenomenon—our history, societal beliefs, and legal traditions are ultimately involved. Thus, many of the cases and discussions that comprise this book will look at the totality of our laws and legal philosophy through the “window” of drug use.

We live in a *Post-9/11* society in which comparisons between drugs and terrorism are inevitable. On more than one occasion, these similarities will be obvious and cannot be dismissed.

The underlying goal of The National Institute on Drug Abuse, one of the institutes of the National Institutes of Health, is understanding and treating drug-induced pathology. A basic paradigm in this quest is *Science—Not Ideology*. I share this ideal and believe that public policy must be based on scientific validity when available—policies resulting from emotions, ideology, or expediency unmodulated by available scientific information are unworthy of a modern democratic society. Therefore, I will begin this book with a comparison of the disciplines of law and science followed by a brief introduction to the discipline of public health law and medicine.

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