



Kathleen Frydl. *The Drug Wars in America, 1940-1973*. New York: Cambridge University Press, 2013. x + 447 pp. \$34.99 (paper), ISBN 978-1-107-69700-3.



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The Power to Prosecute: Analyzing the Origins of the Federal War on Drugs

Many scholars have recognized the federal government's prosecution of the war on drugs is about much more than ending drug abuse. Transcending analyses of *how* the drug war is the basis for policing the poor and minorities at home or projecting power abroad, Kathleen J. Frydl's *The Drug Wars in America, 1940-1973* explores *why* this is the case and from whence these policies originated. Narrating a story of government power, Frydl focuses most of her attention on the middle tier of political economy, or the instruments and institutions of the state (pp. 11-12). *Drug Wars in America* argues that between the end of World War II and 1973 the U.S. government changed the basis of its drug policy from regulation to prohibition. According to Frydl, this shift occurred in response to the challenges posed by maintaining an increasingly powerful federal government. Thus, Frydl highlights a key paradox in this history, demonstrating how the state's actions in its drug war actually reveal the fragile legitimacy of all state power (p. 14).

Diverging from most popular histories on this topic, Frydl does not begin with President Richard Nixon and

his declaration of a war against drugs. *Drug Wars in America* demonstrates that Congress's passage of the Controlled Substances Act (CSA) in 1970 and creation of the Drug Enforcement Agency (DEA) in 1973 enabled a new and overwhelmingly punitive era in drug control. Nonetheless, Frydl portrays these developments as transitory and, in doing so, highlights a number of important underexplored issues for the history of the 1960s and federal drug control. First, she evaluates the reasons for the 1968 reorganization of the federal drug control regime, as Congress reluctantly acceded to President Lyndon Johnson's proposal and combined the Federal Bureau of Narcotics (FBN) from the Treasury Department with the Bureau of Drug Abuse Control from the Food and Drug Administration (FDA) to form the predecessor of the DEA in the Justice Department. More important, she focuses the reader's attention on the concomitant change in the constitutional basis for federal power to control drugs—from taxing powers to the regulation of interstate and intrastate commerce.

The core of *Drug Wars in America* is focused on the

causes and consequences of that shift in institutional and constitutional power. In the aftermath of World War II, the federal government became larger than ever before and increasingly dependent on the collection of income taxes from middle- and working-class Americans. As a result, according to Frydl, administrators in the Treasury Department avoided new enforcement duties and sought to jettison most existing federal excise taxes. This eventually doomed the FBN, which operated out of Treasury under the authority of the Harrison Narcotics Act and Marihuana Tax Act—both revenue-raising measures. Thus, when Congress passed the first comprehensive federal drug bill in 1970, it vested authority to enforce the CSA in the Justice Department and based that power on the Constitution's Commerce Clause. Motivations to then expand that authority ranged from projecting U.S. influence internationally to re-entrenching local police power in the wake of mid-1960s court rulings against public drunkenness and vagrancy statutes.

The narrative of *Drug Wars in America* is based on Frydl's understanding that the tax laws of the FBN were regulatory and the criminal orientation of the Justice Department is inherently prohibitive. Frydl is correct in her assessment of the myriad ways authorities abandoned treatment plans in favor of criminal sentencing starting in the early 1970s. Additionally, she flags a vital point for both scholars and policymakers when discussing how drug distribution and legitimate trade are inextricably related, despite policymakers's ongoing reluctance to regulate such trade. However, certain problems remain in the book's conceptualization of regulation and its analysis of the FBN's activities under Commissioner Harry Anslinger. These deficiencies could have been mitigated with a clearer enunciation at the outset of the author's definition of regulation and prohibition as well as their differences. Additionally, the book's first of two chapters on the international dimensions of federal drug control is not essential to the project's main arguments. The international motivations for the U.S. drug wars is a point well taken, but an opening chapter about the passage of the original federal drug laws in 1914 and 1937 would have heightened Frydl's analysis of the CSA superseding those laws in 1970.

Because of the book's organization, readers may fail to appreciate how Hamilton Wright and others struggled to pass the Harrison Act in 1914. That law and the subsequent Marihuana Tax Act of 1937 did not legislate against possession of illicit drugs but rather the possession of such drugs without the appropriate prescription or tax stamp. This did not result from a clear-headed under-

standing of the relation between drugs and trade, and Frydl, herself, repeatedly demonstrates "when the Bureau [of Narcotics] agents had an addict in hand, they felt they had apprehended a criminal" (p. 31). Instead, as many scholars have noted, constitutional constraints on the policing powers of the federal government necessitated a dependence on revenue measures. That fact makes the shift to the Commerce Clause all the more significant, as the federal government now claimed the power to regulate both the interstate and *intrastate* drug market, thereby enabling an essential aspect of the federal war on drugs: the power to prosecute a person for simply possessing an illegal substance.

The story of Harry Anslinger and the FBN is not a new one, but Frydl adds important elements to this narrative, including some examination of President John Kennedy's Commission on Narcotics and Drug Abuse and the FDA's Bureau of Drug Abuse Control (BDAC). These two groups are evidence of how a new cohort of socially and medically oriented drug reformers expanded the contours of federal drug policy from the mid-1950s through the 1960s in pursuit of high modernist solutions to drug abuse. Almost as soon as it had been achieved, political support for the medical treatment side of this expansion receded while the government's newfound power to prosecute supplemented a return to the punitive approach. Although *Drug Wars in America* implicitly demonstrates this important aspect of 1960s history, its primary reliance on sources from the FBN minimizes analysis of those liberal reformers's explicit pursuit of such power. For example, based on the recommendations of the Kennedy Commission, the Drug Abuse Control Amendments of 1965 created BDAC in the FDA and for the first time granted a federal agency the power to regulate the intrastate commerce in illicit drugs. Instead of a turn away from sumptuary laws and excise taxes or an attempt to compensate for weakness in other policy areas, my own research reveals this was a direct response to the experience of FDA agents who had struggled to prosecute illegal sales because of the requirement to prove prescription drugs had been involved in interstate commerce.

The sprawling analysis found within *Drug Wars in America* and the alternative points raised above evince the complex nature of this history, especially in the 1960s. Frydl has provided an important service for a burgeoning group of scholars interested in the particulars of federal drug control or the overall import of political economy for understanding the history of the United States at mid-century. Although scholars already versed in this histo-

riography might not find much surprising, those new to the subject and graduate students looking for research topics will certainly benefit from Kathleen Frydl's commendable efforts to expand our understanding of the U.S. government's power to prosecute its wars on drugs.

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