

CHAPTER ONE: THE HISTORY OF CANNABIS PROHIBITION

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The Ascendancy and Decline of Worldwide Cannabis Prohibition

The worldwide prohibition of cannabis emerged as part of a system of international controls first developed for other psychoactive drugs. When the representatives of a dozen nations met in Shanghai in 1909 to discuss the possibility of a drug-control treaty, the focus was entirely on limiting opium's importation into China. During a second meeting - held in The Hague in 1912 - cocaine was added to the discussion and, thereafter, was included in all international agreements. At the urging of the United States and Italy,¹ cannabis was discussed at the Hague Conference - but only briefly, and it was not included as a controlled substance. However, at the conference's closing, participants agreed that the "hemp question" should be studied, to allow later assessment of the need for international intervention.²

Although there appears to have been no study, cannabis was included in the 1925 Geneva Convention, which grew out of the next set of international meetings held under the auspices of the League of Nations. With this Convention, signatory nations agreed to limit the export of cannabis, opiates, and cocaine to quantities necessary to meet the legitimate medical and scientific needs of importing countries. Pressure to add cannabis came from Egypt, South Africa, Canada and the United States, with the latter's role being most dominant.

Through the Geneva Convention and later international agreements, the United States influenced the nature of marijuana-control systems around the world for the rest of the 20th century. While few countries ever created laws as punitive as those in America, until quite recently, they offered no serious challenge to the idea that marijuana should be prohibited. However, current developments in other countries suggest that the era of American dominance may be ending.

The Anti-Marijuana Movement in America

In 1925, at the time of the Geneva Convention, journalists and public officials were already defining the smoking of marijuana as a social problem in some parts of the United States. For more than a decade, there had been reports of marijuana's use by Mexican immigrants, most of whom had settled in the Southwest, but some of whom had traveled North and East to work as farm and factory laborers. In the early 1920s, in the

¹ Italy's interest in cannabis control had to do not with cannabis use in Italy, but with its use in Tripolitania and Cyreanica which, following a 1911 war with Turkey, had become Italian protectorates. See Peter D. Lowes, *The Genesis of International Narcotics Control*, Geneva: Librairie Droz (1966).

² For a review of the proceedings of the Shanghai and Hague Conferences, see Lowes, above note 1.

port city of New Orleans, newspapers also reported growing marijuana use by sailors, jazz musicians, prostitutes, gamblers, and criminals. According to Edward Brecher, marijuana spread more widely during the 1920s as a cheap and effective alternative to alcohol which, at the time, was prohibited throughout the country; although more prominent in the lower classes, marijuana was also used by the middle- and upper-class patrons of "tea pads" operating in many large cities.³

American magazines and newspapers played an important role in publicizing marijuana's growing popularity and, in doing so, they followed the general story-line they had developed decades earlier in articles about cocaine and opiates. Two themes predominated. The first was that marijuana was used primarily by "dangerous populations," after which they became more dangerous - committing violent crimes and disrupting public order. The second was that marijuana threatened to "capture" respectable people, particularly youth, and drive them into addiction, insanity, criminality, and sexual promiscuity. Media coverage was strongest in parts of the country where marijuana use had become most visible - and probably was most prevalent - but newspapers and magazines also spread word of this "new drug menace" to places where no use of marijuana had been reported.⁴ As Bonnie and Whitebread explain in their history of early American marijuana policy, the national consensus that had recently been built in opposition to opiates and cocaine was simply applied to marijuana, without alteration.⁵

In the 1914 to 1930, state and local governments throughout the country enacted anti-marijuana laws. Most of the early ones were designed to regulate medicinal products, but the later ones - which prohibited some combination of importation, distribution, sale and possession - were aimed specifically at controlling recreational users.⁶ Thus, while the federal government would not prohibit marijuana until 1937, by the time that legislation was enacted, the drug was already illegal nearly everywhere in the country. Many state laws classified marijuana as a "narcotic" and imposed penalties for marijuana offenses similar to those for opiates and cocaine.⁷

Numerous books and articles have explored the development of America's harsh stand against marijuana. They tend to focus on the period just prior to the 1937 Marijuana Tax Act - and, in particular, on the role of the Federal Bureau of Narcotics and its director,

³ Brecher, Edward, *Licit and Illicit Drugs*, Boston: Little, Brown and Company (1972).

⁴ Jerome L. Himmelstein, *The Strange Career of Marijuana: Politics and Ideology of Drug Control in America*, Westport, CT: Greenwood Press (1983).

⁵ Richard J. Bonnie and Charles H. Whitebread, *The Marijuana Conviction: A History of Marijuana Prohibition in the United States*, Charlottesville: University Press of Virginia (1974).

⁶ There were two waves of law-making related to marijuana. Those states enacting laws prior to 1919 generally did so to enforce state regulations regarding cannabis-containing medicines. Only the California law, enacted in 1915, was designed specifically to control recreational use. In its intent, the California law was similar to laws adopted by Western states in the 1920s. See National Commission on Marijuana and Drug Abuse, *Marijuana: A Signal of Misunderstanding, Appendix Vol. I*, Washington, DC: U.S. Government Printing Office (1972).

⁷ See National Commission on Marijuana and Drug Abuse, above note 6.

Harry Anslinger, in ensuring its passage.⁸ This focus is too narrow. To be sure, Anslinger helped draw attention to the "marijuana menace" - by, for example, circulating to politicians and the media stories about violent crimes committed by "marijuana addicts."⁹ Without Anslinger's zealotry, federal anti-marijuana legislation might not have happened.¹⁰ However, the Marijuana Tax Act did not create marijuana prohibition; and Anslinger should not be credited with creating the anti-marijuana consensus. In fact, its genesis can be traced to forces that preceded marijuana's introduction into American culture in the early 20th century.¹¹

By the mid -19th century, there had emerged a mass movement in the United States to restrict the use of intoxicating substances. Alcohol dominated the anti-drug rhetoric, but reformers also targeted opiates, cocaine and tobacco. Similar "temperance movements" existed in other countries, but nowhere were they stronger than in America. Social historian Harry Levine identifies the forces driving alcohol's demonization forward, focusing in particular on the culture's ideological commitment to individual responsibility - a commitment rooted in puritan protestant values and accelerating as American society moved increasingly toward a form of industrial-capitalism that rewarded individual entrepreneurialism. Especially for members of the middle-class, relying on the power of will to maintain or advance their place in the socio-economic order, the capacity of intoxicants to reduce self-control presented a threat not confronted by previous generations of drinkers.¹² Thus, the middle-class founders of the American temperance movement were particularly concerned about the detrimental effects of alcohol and drugs on their own families and communities.¹³ However, from the beginning, temperance crusaders also focused on drug and alcohol use by the lower classes; and by the early 20th century, this concern dominated the movement.¹⁴

⁸ See, for example, Howard S. Becker, *Outsiders: Studies in the Sociology of Deviance*, New York: Free Press (1963); Donald T. Dickson, "Bureaucracy and Morality," *Social Problems* 16: 143-56 (1968); Joel Fort, *The Pleasure Seekers*, New York: Grove Press (1969); Lester Grinspoon, *Marijuana Reconsidered*, Cambridge, MA: Harvard University Press (1971); Rufus King, *The Drug Hang-Up*, Springfield, IL: Charles Thomas (1974).

⁹ See Becker, above note 8; Himmelstein, above note 4.

¹⁰ Although Anslinger's work provided justification for federal anti-marijuana legislation, until shortly before its passage, he didn't advocate strongly for it. In fact, his purpose in spreading anti-marijuana propaganda around the country in the 1930s was to persuade state legislatures to adopt the Uniform Narcotic Drug Act that had been designed by a government commission. Although he supported marijuana's inclusion in the model law, his broader interest was the creation of state drug laws that duplicated existing federal laws for opiates and cocaine. By the late 1930s, a majority of states had instituted some or all of the recommendations of the model law. (See Bonnie and Whitebread, above note 5.)

¹¹ Hemp was grown in Colonial America, primarily as a source of fiber. By the 19th century, cannabis was used as a medicine and was an ingredient in a variety of widely-available tonics. During this time, it might have been used by some people as a social intoxicant, but there was no evidence of marijuana smoking in North America until the early 20th century.

¹² Harry Gene Levine, "The Discovery of Addiction: Changing Conceptions of Habitual Drunkenness in American," *Journal of Studies on Alcohol* 39: 143-74 (1978); Harry G. Levine, "Temperance Cultures: Concerns About Alcohol Problems in Nordic and English-Speaking Cultures," in G. Edwards and M. Lader (eds), *The Nature of Alcohol and Drug Related Problems*, London: Oxford University Press (1992).

¹³ See, for example, Charles B. Towns, *Habits That Handicap: The Menace of Opium, Alcohol, and Tobacco and the Remedy*, New York: The Century Company (1915); Sara Graham-Mulhall, *Opium: The Demon Flower*, New York: Montrose Publishing Co. (1926); Winifred Black, *Dope: The Story of the Living Dead*, New York: Star Company (1928).

¹⁴ Joseph R. Gusfield, *Symbolic Crusade*, Urbana: University of Illinois Press (1963).

Virtually every demonized drug has, at one time or another, been associated with a lower - class ethnic minority.¹⁵ In the early 20th century, alcohol was associated with European Catholics, opium with Chinese, cocaine with African-Americans, and marijuana with Mexicans. These associations clearly reflected American ethnic and racial prejudices more than actual patterns of drug use in these populations. However, as is the case today, alcohol and drug problems in the early 20th century were undoubtedly both more severe and more visible in the lower classes - in groups not only suffering from problems such as ill health, poor housing, illiteracy and unemployment, but also overrepresented among populations of criminals. Thus, it was not just that drug prohibition provided a mechanism for controlling these "dangerous classes;" it was also that drug use *by the dangerous classes* made the drugs themselves appear more dangerous.¹⁶

By the turn of the 20th century, state and local governments had laws regulating or prohibiting alcohol, cocaine and opiates. In 1919, national alcohol prohibition was enacted. And within a few years, federal law-enforcement officials had transformed the 1914 Harrison Act - which had been designed to monitor and tax opiate and cocaine imports - into a prohibition of all non-medical uses.¹⁷ Prior to the 1920s, law-makers had focused little attention on marijuana.¹⁸ However, once reports of its use as an intoxicant began appearing in some parts of the country, laws prohibiting it were swiftly enacted - without political opposition. Nothing that was said about marijuana during this era had not been said about each of the other prohibited substances. Marijuana was linked to a different subgroup - Mexican immigrants - but otherwise it was alleged to produce the same detrimental consequences as alcohol, cocaine and opiates. Given the country's enthusiasm for using governmental power to stop individuals from consuming these other intoxicating drugs, it is almost inconceivable that marijuana would have remained legally available in America.

¹⁵ See, for example, National Commission on Marijuana and Drug Abuse, above note 6; Troy Duster, *The Legislation of Morality*, New York: Free Press (1970); John Hemler, *Drugs and Minority Oppression*, New York: Seabury Press (1975); Patricia Morgan, "The Legislation of Drug Laws: Economic Crisis and Social Control," *Journal of Drug Issues* 8: 53-62 (1978); David F. Musto, *The American Disease: Origins of Narcotics Control*, New Haven: Yale University Press (1987).

¹⁶ In this regard, the changing image of the opiate addict during the first half of the 20th century is revealing. As the lower class addict came to dominate public perceptions, increasingly harsh systems of control were enacted (see David T. Courtwright, *Dark Paradise: Opiate Addiction in America Before 1940*, Cambridge, MA: Harvard University Press (1982); Duster, above note 15). Today, the negative consequences of drug abuse in low-income urban communities are often attributed to the drugs themselves, and used to justify continuation of the drug-prohibition system (see, for example, Elliot Currie, *Reckoning: Drugs, The Cities, and the American Future*, New York: Hill and Wang (1993); Mathea Falco, *The Making of a Drug-Free America: Programs that Work*, New York: Times Books (1992)).

¹⁷ Because the Harrison Act gave federal officials the authority to determine what constituted "legitimate uses" of these drugs, even their medicinal use came under increasing government scrutiny. Through additional federal legislation and favorable Supreme Court decisions, the Harrison Act became the basis for America's harsh system of drug prohibition (see Musto, above note 15; Arnold S. Trebach, *The Heroin Solution*, New Haven: Yale University Press (1982)).

¹⁸ Cannabis had been included as one of the drugs that required labeling under the 1906 Pure Food and Drugs Act's regulation of medicinal preparations. When the Harrison Act was proposed, there was discussion of including cannabis in its importation restrictions, but the pharmaceutical industry succeeded in opposing it (see Musto, above note 15). Also, because the Harrison Act was designed to control drugs imported into the country it was a problem that cannabis could be cultivated domestically (see Bonnie and Whitebread, above note 5).

U.S. delegates went to Geneva ready to convince other nations that controls against this "newest drug evil" were needed. It wasn't that they believed international trade regulations would solve the domestic marijuana problem. After all, although some of the marijuana used in the United States was imported from Mexico, marijuana was also being cultivated within America's borders. What the U.S. delegates evidently hoped was that marijuana's inclusion in international treaties could be used as leverage at home, to win support for more restrictive legislation, particularly at the federal level where there remained some political opposition.¹⁹ Ironically, while the Geneva Convention failed to have the intended effect on U.S. law-makers, it did have the consequence of introducing marijuana control to parts of the world where it had not existed previously.

International Conventions and Worldwide Cannabis Prohibition

When representatives of the world powers met in Geneva to discuss international restrictions on drug trafficking, there was far from uniformity of interests. At two earlier meetings - in Shanghai in 1909 and in The Hague in 1912 - a series of resolutions were formulated, but no binding obligations were ratified. In 1925, at Geneva, member nations agreed only that they would not export drugs to countries that did not officially sanction their import for medical or scientific purposes.

When the U.S. proposed that cannabis be added to the list of controlled substances, there was little evidence of its use in most of the nations represented in Geneva. However, Egypt and South Africa - two of the countries joining the U.S. in condemning cannabis - reported a domestic problem. In both cases, the problem involved marijuana's use by indigenous populations defined as "dangerous." In South Africa, cannabis was used almost exclusively by native peoples, and was said to make them violent and uncontrollable.²⁰ In Egypt, cannabis was used primarily by lower class Egyptians. According to Gabriel Nahas, opposition to cannabis came from members of the "educated classes," who blamed the drug for "decreased productivity, social fragmentation and stagnation, and increased incidences of mental disease."²¹

Canada's support for including marijuana was also based on the drug's association with deviant behavior although, at the time, there appears to have been no marijuana use in Canada.²² However, scare stories from the United States had begun appearing in the

¹⁹ Earlier, The Hague Convention had been used in a similar way, to pressure the U.S. Congress into passing the 1914 Harrison Act restricting the importation of opiates and cocaine. Congress had considered a similar law a few years earlier, but had failed to enact it, despite the urging of Hamilton Wright, U.S. delegate to the Shanghai and Hague meetings and a committed anti-drug zealot. Wright and other U.S. delegates to these and later meetings regularly used examples of U.S. law to put pressure on the international community for additional controls and, at the same time, used international agreements to urge more stringent laws at home. See Graham-Mulhall, above note 13; Lowes, above note 1; Musto, above note 15.

²⁰ C.J.G. Bourhill, *The Smoking of Dagga (Indian Hemp) Among the Native Races of S. Africa and the Resultant Evils*, unpublished dissertation, Edinburgh University (1916), cited in Edward Brecher (see above note 3).

²¹ Gabriel Nahas, "Hashish and Drug Abuse in Egypt During the 19th and 20th Centuries," *Bulletin of the New York Academy of Medicine* 61: 428-44 (1985).

²² The first known seizure of marijuana in Canada did not occur until 1932. See P.J Giffen, Shirley Endicott, and Sylvia Lambert, *Pain and Indifference: The Politics of Canada's Drug Laws*, Ottawa: Canadian Centre on Substance Abuse (1991).

Canadian press, raising the specter of an inevitable epidemic if preventative measures were not immediately taken. In response, the Canadian Parliament added cannabis to the 1923 Opium and Drug Act. At the Geneva conference, the Canadian delegates were not just willing to accept the inclusion of cannabis; they took a leadership role in promoting it.²³

The willingness of other countries to accept marijuana's inclusion - at the urging of these four nations - can probably best be understood as a consequence of their lack of reasons to resist it. In discussions about opiates and cocaine, at Geneva as well as earlier conferences, countries benefiting from their international trade raised objections to nearly every proposed restriction.²⁴ However, none of the major countries participating in the Geneva Conference were involved in cannabis trade; thus none had a financial interest in opposing its inclusion in the final agreement.²⁵ So although most of the signatory nations had no domestic marijuana problem that needed solving, they approved marijuana's addition to the list of "dangerous drugs" - a list that, previously, had contained only opiates and cocaine.

After Geneva, countries that had not done so previously began passing domestic legislation to restrict cannabis importation. In fact, because the Geneva Convention obligated drug-exporting countries to restrict exports to amounts *officially approved by importing nations*, such laws were needed to guarantee the continuation of cannabis supplies for legitimate medical and scientific purposes. Nothing in the Geneva Convention obligated nations to prohibit cannabis possession or use among citizens at home. Nor did the agreement require the prohibition of distribution, sale, or domestic cultivation. Some of the national laws that were put in place shortly after the Geneva Convention did create punitive cannabis-control systems.²⁶ However, for none of the drugs in the treaty was prohibition a requirement.

The situation changed substantially in 1961 with adoption of the Single Convention. This agreement was designed to bring together, under the authority of the United Nations, the various treaties and amendments that had been signed previously. However, in its final form, the Single Convention went much further than earlier agreements by including a number of provisions that seriously restrained domestic cannabis-policy in member nations. In addition to regulating legitimate cannabis trade, as had earlier treaties, the Single Convention required the prohibition of *domestic cannabis cultivation* for all but medical and scientific purposes. It also required that

²³ See Giffen et al, above note 22.

²⁴ See Lowes, above note 1.

²⁵ Only India, a country in which significant amounts of cannabis were cultivated and used, objected to including cannabis in the agreement - and its objections were not persuasive (see Bonnie and Whitebread, above note 5).

²⁶ England, for example, created a prohibitory system in 19xx (see Bonnie and Whitebread above note x). In contrast, Holland's 1928 law only regulated cannabis imports (see Marcel de Kort, "A Short History of Drugs in the Netherlands," pp 3-22 in E. Leuw and I.H. Marshall (eds), *Between Prohibition and Legalization: The Dutch Experiment in Drug Policy*, Amsterdam: Kugler Publications (1994); Eric Fromberg, "The Case of the Netherlands: Contradictions and Values," pp 113-24 in International Antiprohibitionist League, *Questioning Prohibition: 1994 International Report on Drugs* (1994)).

cannabis possession be a "punishable offense." And, it required that countries take "such legislative and administrative measures" as necessary to eliminate illicit trafficking and illicit cannabis use. These obligations were not created specifically for cannabis; rather, they were created to apply generally to all substances defined in the Convention as "dangerous."²⁷

The Single Convention provides no mechanism through which a country can reject selected provisions, or selected drugs. To obtain the Convention's protections, signatory nations must accept all its restrictions. As a consequence, the full legalization of cannabis is not an option. However, within the general prohibition requirement of the Single Convention, countries have some flexibility regarding the severity of penalties for marijuana offenses and the priority given to their enforcement.²⁸ In fact, over the years, a wide variety of cannabis-control systems have been developed. At one end of the spectrum is the United States, which has adopted an extremely punitive form of prohibition. At the other end is The Netherlands, which technically prohibits cannabis but, in practice, allows it to be consumed and sold openly.

Opposite Ends of the Prohibition Continuum: The United States and The Netherlands

With only minor exception, the U.S. system of marijuana prohibition has become steadily more punitive since the 1920s. Today, marijuana offenses are included in both federal and state criminal codes, and both federal and state policing agencies participate in their enforcement. Through the years, most arrests have been at the state level. However, the federal government has played a critical role in escalating the intensity of the marijuana prohibition system. Even before passage of the 1937 Marijuana Tax Act, the Federal Bureau of Narcotics disseminated anti-marijuana propaganda and lobbied state legislatures to enact restrictive laws. And, in the years since, federal officials have urged an increase in state penalties for marijuana offenses every time federal penalties have been raised.

Prior to the 1950s, federal marijuana offenses were governed by the Marijuana Tax Act and offenses related to opiates and cocaine were covered under the 1914 Harrison Act and its amendments. With the 1951 Boggs Act, Congress integrated these two schemes; and in doing so, it created a mandatory prison term of 2 years for all first-time drug offenders, *regardless of the drug or the act committed*. In 1956, the Narcotic Drug Control Act raised some federal penalties again; first-time possession of any controlled substance continued to carry a minimum 2-year penalty while first-time sale, *of any drug in any amount*, was punished by a minimum of 5 years and a maximum of 10 years in prison. About the same time, penalties were raised at the state level. By the 1960s, in

²⁷ As new drugs were added - for example, as part of the 1971 Vienna Convention on Psychotropic Substances - the regulations of the 1961 Single Convention were applied to them as well.

²⁸ Gianfranco Dell'Alba, Olivier Dupuis, and Jean-Luc Robert, "For a Revision on the International Policy on Drugs," pp 209-42 in *Questioning Prohibition: 1994 International Report on Drugs*, Brussels: International Antiprohibitionist League (1994).

every state, marijuana possession, even in amounts for personal use, was a felony. Most states imposed mandatory prison terms for first-time offenders and, in some states, life imprisonment was a possibility.²⁹

Following the increase in American marijuana use in the 1960s, these harsh laws began to be challenged, not only by marijuana smokers but by scholars, professional associations, and governmental commissions.³⁰ In 1970, the U.S. Congress reduced the federal penalty for marijuana possession, eliminating mandatory imprisonment. By the mid-1970s, virtually every state had reduced marijuana possession from a felony to a misdemeanor, and nearly a dozen states had eliminated criminal penalties altogether.³¹ To many observers, marijuana's further decriminalization, and even its full legalization, seemed imminent.³²

This reform effort was halted in the late 1970s with a resurgence of prohibitionist fervor. By the mid-1980s, many of the states that had eliminated imprisonment for marijuana possession had reinstated it and, in 1986, Congress did likewise.³³ Arrests for marijuana offenses, which had declined in the 1970s, began increasing again and by the early 1990s, the police were making about 400,000 marijuana arrests per year - about 85 percent of them for simple possession.³⁴ In addition to using criminal sanctions, state and federal officials also increasingly utilized civil forfeiture laws to confiscate land, automobiles and other property simply upon *the arrest* of alleged marijuana offenders.³⁵

Under the administration of President Bush, "zero-tolerance" and "user accountability" became the rallying cries of the federal government.³⁶ Using the threat of lost highway funds, the federal government pressured state legislatures to enact laws that would automatically revoke the drivers' licenses of drug offenders - laws that would be enforced primarily against marijuana users, even though most of them had not been driving a car when arrested.³⁷ The Bush Administration also urged private businesses to

²⁹ Alfred R. Lindesmith, *The Addict and the Law*, Bloomington: Indiana University Press (1965); Brecher, above note 3; Bonnie and Whitebread, above note 5; National Commission on Marijuana and Drug Abuse, above note 6; King, above note 8.

³⁰ See Himmelstein, above note 4.

³¹ Eric W. Single, "The Impact of Marijuana Decriminalization: An Update," *Journal of Public Health Policy* 12: 456-66 (1989).

³² Himmelstein, above note 4; Grinspoon, above note 8; John Kaplan, *Marijuana: The New Prohibition*, New York: The World Publishing Company (1970).

³³ Arnold S. Trebach, *The Great Drug War*, New York: Macmillan Publishers (1987).

³⁴ FBI Uniform Crime Reports, *Crime in the United States: 1994*, Washington, DC: U.S. Government Printing Office (1995).

³⁵ Terrance G. Reed, "American Forfeiture Law: Property Owners Meet the Prosecutor," *Policy Analysis* 179 (1992); Steven B. Duke and Albert C. Gross, *America's Longest War: Rethinking Our Tragic Crusade Against Drugs*, New York: G.P. Putnam's Sons (1993).

³⁶ See Bush Administration Report, The White House, *National Drug Control Strategy* (1989).

³⁷ "States Are Pressed to Suspend Driver Licenses of Drug Users," *The New York Times* November 14 (1992); "Wilson Vetoes Medical Marijuana, Signs 'Smoke a Joint, Lose a License,'" *California NORML Reports* 18, 3: 1 (1994).

join the war on drugs by searching out drug users and imposing social sanctions. Toward this end, workplace drug-testing programs were expanded, exposing millions of American workers and job applicants to the threat of lost employment for a positive urine test - mostly for marijuana.³⁸ Colleges and universities also joined the anti-drug effort by instituting policies of automatic expulsion for students arrested for any drug offense.³⁹ In short, American policy sought to maximize deterrence by maximizing the punishment and exclusion of marijuana users. To drug warriors, anything less would be "surrendering to evil."⁴⁰

In contrast, drug policy in The Netherlands, especially since the 1970s, has been oriented toward the normalization and integration of marijuana users. Prior to 1953, there were no laws against cannabis sale and possession, and even after such laws were enacted, enforcement was infrequent and only large-scale smugglers and dealers faced a likelihood of imprisonment. Indeed, with regard to all illicit drugs, the Dutch have never sought out users and small-time dealers for the purpose of imposing harsh criminal penalties.⁴¹

In 1976, with revision of the Opium Act, Dutch law designated cannabis a "soft" drug and created a more lenient scheme of sanctions than those applied to "hard" drugs such as heroin and cocaine. While the possession and sale of cannabis remained technically illegal, the "expediency principle" established that enforcing these laws would be a low priority. Even before 1976, law enforcement officials in most parts of the country had ignored possession and small-scale sales; by making this policy more explicit, the 1976 law guaranteed that law enforcement officials throughout the country would follow a minimal-enforcement philosophy. More importantly, the law allowed the emergence of legitimate systems of retail sale, which could then be monitored and regulated by the government.

Although there are many avenues through which cannabis may be distributed to Dutch users, the most visible is through "coffee shops," scattered throughout the country. Because regulations for their operation are established and enforced by local officials,

³⁸ Lynn Zimmer and James B. Jacobs, "The Business of Drug Testing: Technological Innovation and Social Control," *Contemporary Drug Problems* 19: 345-60 (1991); Institute of Medicine, *Under the Influence? Drugs and the American Work Force*, Washington, DC: National Academy Press (1994).

³⁹ National Commission on Drug-Free Schools, *Toward a Drug-Free Generation: A Nation's Responsibility*, Washington, DC: U.S. Government Printing Office (1990).

⁴⁰ See, for example, James Q. Wilson, "Against the Legalization of Drugs," pp 27-45 in R.L. Evans and I.M. Berent (eds), *Drug Legalization: For and Against*, LaSalle, IL: Open Court (1992); William J. Bennett, "Mopping Up After the Legalizers: What the 'Intellectual' Chorus Fails to Tell You," pp 221-28 in R.L. Evans and I.M. Berent (eds); Melvyn Levitsky, "U.S. Efforts in the International Drug War," pp 360-67 in M.B. Krauss and E.P. Lazear, *Searching for Alternatives: Drug-Control Policy in the United States*, Stanford, CA: Hoover Institution Press (1991); Joel W. hay, "The Harm They Do To Others: A Primer on the External Costs of Drug Abuse," pp 200-25 in M.B. Krauss and E.P. Lazear (eds); Robert E. Petersen, "Legalization: The Myth Exposed," pp 324-55 in M.B. Krauss and E.P. Lazear (eds).

⁴¹ Jos Silvis, "Enforcing Drug Laws in the Netherlands," pp 41-58 in E. Leuw and I.H. Marshall (eds), *Between Prohibition and Legalization: The Dutch Experiment in Drug Policy*, Amsterdam: Kulger Publications (1994); Eddy L. Engelsman, "Drug Policy in The Netherlands From a Public Health Perspective," pp 169-74 in M.B. Krauss and E.P. Lazear, *Searching for Alternatives: Drug-Control Policy in the United States*, Stanford, CA: Hoover Institution Press (1991).

they vary somewhat from one place to another. However, in general, cannabis "coffee shops" are left alone as long as they do not advertise their products, do not sell more than 30 grams per transaction, do not sell to minors, and do not permit the sale of "hard" drugs on the premises. Any violation of these rules results in immediate closure and possible criminal prosecution.⁴²

Two main considerations motivated this lenient cannabis policy. First, the Dutch sought to provide a venue for retail purchases that would not expose cannabis users to the sellers of other drugs. By separating the "hard" and "soft" drug markets, Dutch policy-makers hoped to decrease the likelihood that cannabis users would experiment with heroin or cocaine. Second, the Dutch sought to keep cannabis users integrated into the mainstream culture, thereby reducing the likelihood of their becoming permanently attached to a deviant subculture. Whatever its deterrent effect, prohibition pushes cannabis users into either using the drug in clandestine settings or using it openly and defiantly in public places - both of which Dutch policy-makers viewed as inherently disruptive to the social order. In this sense, the decision to tolerate cannabis use was driven more by conservative than liberal values; by stripping cannabis of its "outlaw status," law-makers hoped to keep the growing number of cannabis users committed to the society's dominant normative order.⁴³

To remain within the requirements of the Single Convention, Holland continued to criminalize cannabis cultivation, importation, and large-scale distribution. In fact, the 1976 Revised Opium Act increased penalties for these offenses. Still, Holland's de facto legalization of retail sales was criticized extensively by the governments of more strictly prohibitionist nations, particularly the United States. Government officials in some neighboring countries, such as Germany and France, also complained that Dutch leniency undermined their attempts to stop the distribution of cannabis across international borders.⁴⁴ In response, Dutch authorities tightened "coffee shop" regulations somewhat. However, Holland shows no signs of retreating from the basic model of cannabis decriminalization and normalization created in 1970s.⁴⁵

The U.S. and Holland in International Perspective

⁴² A.C.M. Jansen, "The Development of a 'Legal' Consumers Market for Cannabis; The 'Coffee Shop' Phenomenon," pp 169-82 in E. Leuw and I.H. Marshall (eds), *Between Prohibition and Legalization: The Dutch Experiment in Drug Policy*, Amsterdam: Kugler Publications (1994).

⁴³ See Sebastian Scheerer, "The New Dutch and German Drug Laws: Social and Political Conditions for Criminalization and Decriminalization," *Law and Society* 12: 585-606 (1978).

⁴⁴ Dirk J. Korf, "Drug Tourists and Drug Refugees," pp 119-44 in E. Leuw and I.H. Marshall (eds), *Between Prohibition and Legalization: The Dutch Experiment in Drug Policy*, Amsterdam: Kugler Publications (1994); Silvis, above note 41.

⁴⁵ "Fact Sheet: Cannabis Policy," Utrecht: Netherlands Institute for Alcohol and Drugs (1995); "Drug Policy in the Netherlands," Joint Report of the Ministry of Welfare, Health and Cultural Affairs and the Ministry of Justice (November 1994).

By the early 1970s, because of the Single Convention, marijuana prohibition existed in practically every nation.⁴⁶ Most countries made prison terms a possibility for the offenses of possession, sale, cultivation and importation. Fines were common as well - either as an additional sanction or as an alternative sentencing option.

Most Western democratic countries had cannabis policies closer to those in Holland than those in the United States. Mandatory prison terms for possession were extremely rare and where they existed, they tended to be for no more than 6 months. Three exceptions were France (which set a minimum of 2 years and a maximum of 10 years in prison for marijuana possession), Mexico (minimum 3 and maximum 12), and Italy (minimum 3 and maximum 8). Other than the U.S. *no country imposed life imprisonment for possession*. In fact, Canada was the only other country that permitted life imprisonment for *the sale of marijuana*, and it gave judges the option of rejecting imprisonment altogether. Table 1 presents the sentencing schemes for cannabis possession and sale for selected countries in the early 1970s.

PENALTIES FOR MARIJUANA OFFENSES⁴⁷

(Years of Imprisonment)

	<u>Possession</u> ⁴⁸	<u>Sale</u>
Australia	0-2 yrs	0-2 yrs
Austria	1 wk-6 mos	1-5 yrs
Belgium	3 mos-2 yrs	3 mos-2 yrs
Canada	0-7 yrs	0-life
Denmark	0	0-6 yrs
Finland	14 days-4 yrs	14 days-4 yrs
France	2-10 yrs	2-10 yrs

⁴⁶ Even countries that had not signed the Single Convention often had laws consistent with its provisions. The failure to sign did not necessarily reflect a country's rejection of the Convention's main requirements and, in some cases, domestic legislative bodies were simply concerned about the costs of complying with data-gathering and monitoring tasks. Many of the countries that had not ratified the Convention by the early 1970s have since done so.

⁴⁷ See National Commission on Marijuana and Drug Abuse, above note 6, pp 534-42.

⁴⁸ These are penalties for marijuana possession in amounts for personal use; in some but not all cases, possession of larger amounts carried higher penalties. Penalties were also sometimes higher when offenders failed to plead guilty to the "summary offense."

Germany (W)	0-3 yrs	0-3 yrs
Greece	6 mos	0-10 yrs
Ireland	0-6 mos	0-6 mos
Israel	0-2 yrs	0-2 yrs
Italy	3-8 yrs	3-8 yrs
Mexico	3-12 yrs	3-12 yrs
New Zealand	0-3 mos	0-14 yrs
Norway	0-2 yrs	0-6 yrs
Portugal	6 mos-1 yr	2-8 yrs
Spain	6 mos-6 yrs	6 mos-6 yrs
Sweden	0-6 yrs	0-6 yrs
Switzerland	0-5 yrs	0-5 yrs
United Kingdom	6 mos	1 yr

The Future of Cannabis Policy

In the 1970s, marijuana reformers in the United States were naively optimistic; as penalties were reduced around the country, they predicted the imminent end of marijuana prohibition. Instead, within a few years, they witnessed a dramatic increase in the punitiveness of America's response to marijuana users. In the 1990s, that punitive trend continues. Anti-marijuana propaganda continues to be generated and widely disseminated by the federal government.⁴⁹ In 1992, the federal government even closed down a modest program for delivering medical marijuana to patients on the grounds that it "sent the wrong message" about the drug's margin of safety and social acceptability.⁵⁰ Marijuana arrests - mostly for possession - continue to climb; in fact, in New York City, under order of the mayor, the police are targeting public marijuana smokers and subjecting them to the full misdemeanor arrest procedure, which often involves several

⁴⁹ See Lynn Zimmer and John P. Morgan, *Exposing Marijuana Myths: A Review of the Scientific Evidence*, New York: The Lindesmith Center (1995).

⁵⁰ Lester Grinspoon and James B. Bakalar, "Marijuana As Medicine: A Plea for Reconsideration," *Journal of the American Medical Association* 273: 1875-76 (1995).

days in jail awaiting a court appearance.⁵¹ In California, a large majority of those recently sentenced to long prison terms as repeat offenders had been convicted of a marijuana offense.⁵² Despite the presence of growing marijuana-reform movement challenging America's punitive policy, it shows no signs of abating.

For most of the 20th century, the United States played an important role in shaping worldwide cannabis policy. It advocated the inclusion of marijuana in the 1925 Geneva Convention and supported the Single Convention's restrictions on the domestic policy of member nations. The United States provided a model for both decriminalization in the 1970s and recriminalization the following decade. However, by the 1990s, America's ability to influence worldwide cannabis policy had clearly diminished, as more and more countries began moving away from the U.S. model of strict prohibition and toward the Dutch model of decriminalization.

The future, of course, is uncertain. The Single Convention remains an obstacle to marijuana's full legalization, and should the International Narcotic Control Board of the United Nations move to sanction the Netherlands for its policy of de facto legalization, it could deter additional nations from experimenting with lenient policies. Already, Holland faces strong opposition from European countries that retain strict marijuana prohibition systems - particularly France⁵³ and Sweden.⁵⁴ In addition, the 1990 Schengen Agreement, signed by members of the European Economic Community - including Holland - obligates participants to develop "compatible" drug policies.⁵⁵ Even without international pressure, there is a chance that recent legislative and administrative reforms will be reversed as elections bring different political parties into power.

Despite these limitations, it seems reasonable to predict that marijuana prohibition will continue to wane. A century of restrictive legislation has not stopped marijuana's movement into Western culture. Indeed, even America's tough policies have not stopped recent increases in marijuana prevalence.⁵⁶ In centuries past, other new drugs - such as coffee and tobacco - were initially demonized and even outlawed, but were eventually integrated into the culture.⁵⁷ While it is not inevitable that marijuana will follow this pattern, marijuana's widespread use, by all social groups and classes, establishes an important context for its normalization. Clearly, the United States will not lead the reform movement. However, it may someday follow.

⁵¹ Clifford Krauss, "Crackdown is Intensified in Quality-of-Life Crimes," *The New York Times*, March 6: B3 (1996); Randy Shain, "Doing Major Time for a Minor Crime," *The New York Times*, March 10 (1996).

⁵² Fox Butterfield, "Tough Law On Sentences is Criticized," *The New York Times* March 8 (1996).

⁵³ See Bertrand, above note 52.

⁵⁴ Europe Against Drugs, "Four Steps in the Development of a Narcotic Epidemic," *EURAD News* 2 (1990).

⁵⁵ Tom Blom and Hans van Maastricht, above note 64.

⁵⁶ National Institute on Drug Abuse, *National Survey Results on Drug Use, Monitoring the Future* (1995).

⁵⁷ Wolfgang Schivelbusch, *Tastes of Paradise: A Social History of Spices, Stimulants, and Intoxicants*, New York: Vintage Books (1992).