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John Kaplan, Marijuana—The New Prohibition

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BOOK REVIEWS

MARIJUANA—THE NEW PROHIBITION. By John Kaplan. New York: World Publishing Company. 1970. Pp. xii, 387. \$8.50.

It is curious at this time of major social, economic and political conflict that a book on national marijuana policy can be deemed important, but that is precisely what John Kaplan's *Marijuana—The New Prohibition* is—an important book. Its importance lies not so much in its intrinsic merits—although it is a well argued book—as in its detailed and persistent reminder of the sheer folly of investing and deploying major national and local energies and resources toward the “solution” of the marijuana “problem.” It turns out, according to Professor Kaplan, that the law—the “solution”—is the problem. And, after all, isn't this the nature of much of the present crisis—an inversion of priorities and efforts which deepen rather than lessen conflict?

Professor Kaplan is so articulate with the elements of his argument and the managed balance of his lawyer's brief that he fails to drive home both the pure comedy and high tragedy of our marijuana policy. In particular, he fails to exploit his own brilliant thesis: that current marijuana policy, like the “noble experiment” of Prohibition, is more a matter of assertion of cultural symbols and gesture than a matter of realistic social control. After setting forth the symbolic meaning of the network of enforcement of criminal sanctions against use of marijuana in comprehensive and believable terms and examining the reality of the effects of ordinary marijuana usage, Kaplan continues with a responsible, but heavy, cost-benefit analysis.

On the cost side, Kaplan again brilliantly catalogues and explicates the heavy social, economic and human costs directly and indirectly attributable to criminal treatment of the marijuana user. All of the costs are accounted for :

1. The criminalization of an estimated 12 to 15 million users—particularly among the younger generations.
2. The economic costs of policing, arresting, processing and “correcting” the “offenders.” There were 34,000 adult and 17,000 juvenile arrests for marijuana in 1968 in California alone.
3. The direct human costs to those who are arrested for partaking in their drug while the legislators, police and parents enjoy immunity while partaking in theirs—alcohol.

4. The depletion of credibility in any successful drug education program brought about by lumping a relatively harmless drug with harmful drugs.
5. The alienation of the actual and potential user from the rule of law because of the lack of credibility about the "rightness" of the rule against marijuana use.
6. The deterioration of the constitutional and police values because of:
 - (a) The necessary employment of intrusive means of detecting and apprehending the "victimless criminal."
 - (b) Selective enforcement.

Against these heavy costs, Kaplan devotes the greatest portion of this work (to his discomfort as well as that of the reader) to a compendious treatment of the supposed benefits of criminalizing marijuana use. Suffice it to say that he shoots down each argument one-by-one. Marijuana has not been shown to be linked to aggressive or criminal behaviour; marijuana has not been shown to lead to hard drugs; etc. The author's position is neither weak nor uninformed. Kaplan provides a responsible tour through much of the literature and hard research data that exists. For the reader approaching the work as a juror or a would-be-informed citizen, there is a careful weighing of the issue: are there benefits that outweigh the obvious costs of our marijuana policy? "No," Kaplan answers, but ultimately, the weight of his argument detracts from the initial brilliance of his thesis and is tedious to boot.

The strength of the work is its balance. It is also its weakness. The case against marijuana is made by Kaplan, but it may be simpler. The underlying major premise of our social and legal existence is argued by Kaplan but not emphasized. Ours is a free society. Independent of the lack of wisdom and unworkability in the attempts to criminalize alcohol or marijuana or other instances of moral behaviour, there may be a more basic question: can we, or should we, impose criminal sanctions on private conduct, even if such sanctions are reasoned and workable? This is a substantial question not reached by a cost-benefit analysis. The United States Supreme Court in *Stanley v. Georgia*¹ voided a Georgia law criminalizing possession of pornography and ruled that the state had insufficient interest in protecting a person from himself. That is where we must start with marijuana—or alcohol, tobacco, gambling and other "vices." It is only after the legitimacy of interest is acknowledged in the first place that the necessity of applying a cost-benefit analysis

1. 394 U.S. 557 (1969).

occurs or should even be permissible.² The case against criminal treatment of marijuana users is merely made more persuasive by its fallacious underpinnings, its practical unworkability and its high costs.

The pure comic aspects of marijuana legislation are framed by asking the question: who, precisely, is engaged in a systematic flight from reality? Are not the legislators, the prosecutors and the police who seek to reapply the formula of Prohibition the real "trippers," the real "heads" in our society? Have not they, more than their quarry, adopted an overly pleasant, fantasy view of social problems, which has the disorientation of time, space and complexity in its belief that there are simple solutions to complex problems? What may be needed more than Professor Kaplan's book is another Jonathan Swift to save for posterity the image of the war between the big-endians and the little-endians at a time when legislative innovation and boldness is urgently needed to solve a vast array of basic social problems. The image of major social energies being spent on the attempt to regulate moral conduct at a time when those energies are needed elsewhere is ludicrous. It is also tragic.

The real tragedy, however, is the loss to society of our most energetic and profound resource—the young. Marijuana policy is truly directed at them in the same way, as Kaplan points out, that Prohibition was directed at the Urban Easterners. By warring on the culture of the youth, while at the same time condoning the drug of their elders—alcohol, society underscores its hostility to change and eschews participation of the young in bringing about needed and orderly reform. It is this social policy that we cannot afford.

It might be said that neither alcohol nor marijuana is important enough to warrant concern over policy choices, but that argument misses the point. In microcosm, the manner in which society has approached both problems, alcohol and marijuana, is a signal of broader misapplication of the democratic potential. Both "problems" reached crisis at a time of profound national upheaval and change; both problems are heavily infested with an overlay of magic and mysticism; in both, passions were and are inflamed; and in each these passions were a smoke screen for a deeper resentment—resistance to change. More important, the policy makers and leaders appealed to these passions rather than to the more difficult task of problem-recognition and problem-solving for which the democratic process assumes the electorate has the capacity. The mari-

2. The outrageous error in *Korematsu v. United States*, 323 U.S. 214 (1944), where the Supreme Court sanctioned the internment and relocation of American citizens of Japanese origins, occurred precisely because a cost-benefit analysis was applied in advance of the threshold question: can this be done at all?

juana issue poses the broader question: shall policy be the result of reason or shall it be the product of appeals to the "silent majority?"

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